

No. 10967

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

---

WILLIAM MORRIS,

Appellant.

vs.

UNITED STATES OF AMERICA,

Appellee.

---

## TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

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**FILED**

MAY 16 1945

PAUL P. O'BRIEN!  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in *italics* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

MARIO PERELLI-MINETTI

704 South Spring Street

Los Angeles, California

E. O. LEAKE

J. J. LEAKE

901 Chester Williams Building

Los Angeles 13, California

For Appellee:

CHARLES H. CARR

United States Attorney

ERNEST A. TOLIN

Assistant U. S. Attorney

600 U. S. Post Office and Court House Building

Los Angeles 12, California [1\*]

In the District Court of the United States  
Southern District of California  
Central Division

No. 17242

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM MORRIS,

Defendant.

### INFORMATION

Comes now Charles H. Carr, United States Attorney in and for the Southern District of California, Central Division, who for the United States and in its behalf, prosecutes in his own proper person, and with leave of Court first had and obtained, gives the Court here to understand and be informed as follows, to-wit: [2]

### COUNT ONE

That on or about the 27th day of October 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the district aforesaid and in the central division thereof, and within the jurisdiction of this Court, the defendant William Morris violated the provisions of the Emergency Price Control Act of 1942 as amended, in that he did knowingly, wilfully and unlawfully make an entry false in a material respect, in Morris Bros. Fruit Co.'s copy of a statement showing the sale to Aldrich & Company, 14 South Water Market, Chicago, Illinois, of five hundred and eighty-two (582) boxes of oranges for the price of Four Dollars and Fifty cents (\$4.50) per box, or a total sum of Two Thousand Six Hundred and Nineteen Dollars (\$2619.00), whereas the

actual price charged for the sale of said oranges at said time and place was an average of Five Dollars and Fifty cents (\$5.50) per box, or a total sum of Three Thousand Two Hundred and One Dollars (\$3201.00), which fact as to the price charged for said sale of said oranges was known to the defendant at the time of said entry, and said entry was false at the time of making said record, and said record was a document required to be kept under the provisions of Section 1351.1405(g) of Maximum Price Regulation 292, as amended, (8 Fed. Reg. 135 and 8 Fed. Reg. 543) which was promulgated pursuant to the provisions of Section 202 of the Emergency Price Control Act of 1942, as amended; in violation of Section 205 (b) of the Emergency Price Control Act, as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [3]

## COUNT TWO

That on or about the 27th day of October 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the district aforesaid and in the central division thereof, and within the jurisdiction of this Court, the defendant William Morris violated the provisions of the Emergency Price Control Act of 1942 as amended, in that he did knowingly, wilfully and unlawfully make an entry false in a material respect, in Morris Bros. Fruit Co.'s copy of a statement showing the sale to Aldrich & Company, 14 South Water Market, Chicago, Illinois, of five hundred and eighty-two (582) boxes of oranges for the price of Four Dollars and Fifty cents (\$4.50) per box, or a total sum of Two

Thousand Six Hundred and Nineteen Dollars (\$2619.00), whereas the actual price charged for the sale of said oranges at said time and place was an average of Five Dollars and Fifty cents (\$5.50) per box, or a total sum of Three Thousand Two Hundred and One Dollars (\$3201.00), which fact as to the price charged for said sale of said oranges was known to the defendant at the time of said entry, and said entry was false at the time of making said record, and said record was a document required to be kept under the provisions of Section 1351.1405(g) of Maximum Price Regulation 292, as amended, (8 Fed. Reg. 135 and 8 Fed. Reg. 543) which was promulgated pursuant to the provisions of Section 202 of the Emergency Price Control Act of 1942, as amended; in violation of Section 205 (b) of the Emergency Price Control Act, as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [4]

### COUNT THREE

#### I.

Louis Morris, William Morris and Andrew Morris, co-partners, doing business as Morris Bros. Fruit Co., at all times herein mentioned were intermediate sellers, classified as cash-and-carry wholesalers as defined in Section 1351.1405 of Maximum Price Regulation 292, as amended (8 Fed. Reg. 135 and 8 Fed. Reg. 343).

#### II.

On or about the 27th day of October 1943, in the City of Los Angeles, County of Los Angeles, State of

California, in the district and division aforesaid and within the jurisdiction of this Court, defendant William Morris, acting as an employee, agent and co-partner of said Morris Bros. Fruit Co., a co-partnership, violated the provisions of the Emergency Price Control Act of 1942, as amended, in that he did knowingly, wilfully and unlawfully agree to sell, offer to sell and did sell to Aldrich & Company, 14 South Water Market, Chicago, Illinois, a carload of oranges, consisting of five hundred and eighty-two (582) boxes of packed wrapped oranges, cash-and-carry Los Angeles, California, for the sum of Three Thousand Two Hundred and One Dollars (\$3201.00), or an average price per box of Five Dollars and Fifty cents (\$5.50); that the maximum price permitted in Maximum Price Regulation 292, as amended, (8 Fed. Reg. 135, 8 Fed. Reg. 2869 and 8 Fed. Reg. 6134) for said sale of said packed wrapped oranges, was Four Dollars and Forty-nine Cents (\$4.49) per box, or a total sum of Two Thousand Six Hundred and Thirteen Dollars and Eighteen Cents (\$2613.18) which was the maximum price permitted for said sale of said carload of said oranges: in violation of Section 1351.1401 of said Maximum Price Regulation 292, as amended, issued pursuant to the provisions of the Emergency Price Control Act of 1942, as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [5]

## COUNT FOUR

## I.

Louis Morris, William Morris and Andrew Morris, co-partners, doing business as Morris Bros. Fruit Co., at all times herein mentioned were intermediate sellers, classified as cash-and-carry wholesalers as defined in Section 1351.1405 of Maximum Price Regulation 292, as amended (8 Fed. Reg. 135 and 8 Fed. Reg. 343).

## II.

On or about the 27th day of October 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid and within the jurisdiction of this Court, defendant William Morris, acting as an employee, agent and co-partner of said Morris Bros. Fruit Co., a co-partnership, violated the provisions of the Emergency Price Control Act of 1942, as amended, in that he did knowingly, wilfully and unlawfully agree to sell, offer to sell and did sell to Aldrich & Company, 14 South Water Market, Chicago, Illinois, a carload of oranges, consisting of five hundred and eighty-two (582) boxes of packed wrapped oranges, cash-and-carry Los Angeles, California, for the sum of Three Thousand Two Hundred and One Dollars (\$3201.00), or an average price per box of Five Dollars and Fifty Cents (\$5.50); that the maximum price permitted in Maximum Price Regulation 292, as amended, (8 Fed. Reg. 135, 8 Fed. Reg. 2869 and 8 Fed. Reg. 6134) for said sale of said packed wrapped oranges, was Four Dollars and Forty-nine Cents (\$4.49) per box, or a total

sum of Two Thousand Six Hundred and Thirteen Dollars and Eighteen Cents (\$2613.18) which was the maximum price permitted for said sale of said carload of said oranges; in violation of Section 1351.1401 of said Maximum Price Regulation 292, as amended, issued pursuant to the provisions of the Emergency Price Control Act of 1942, as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [6]

Wherefore, said United States Attorney prays that process of this Court be issued against said defendant and that he be dealt with according to law.

CHARLES H. CARR

United States Attorney

By Ernest A. Tolin

Assistant United States Attorney [7]

[Verified.]

[Endorsed]: Filed Oct. 5, 1944. [8]

At a stated term, to-wit: The September Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 5th day of October in the year of our Lord one thousand nine hundred and forty-four.

Present:

The Honorable Ben Harrison, District Judge.

No. 17,242-Crim.

United States of America

vs.

William Morris

On motion of E. A. Tolin, Esq., Assistant U. S. Attorney, appearing for the Government, who presents an Information to the Court in this cause, it is ordered that the said Information be filed and no bond is fixed. [9]



[Title of District Court and Cause.]

DEMURRER TO INFORMATION

Comes now defendant above named, through his counsel, E. O. Leake, and demurring to the information for cause of demurrer states:

I.

That said information fails to state facts sufficient to constitute a criminal offense.

II.

That count 1 of said information fails to state facts sufficient to constitute a criminal offense.

III.

That count 2 of said information fails to state facts sufficient to constitute a criminal offense.

IV.

That count 3 of said information fails to state facts sufficient to constitute a criminal offense. [10]

V.

That count 4 of said information fails to state facts sufficient to constitute a criminal offense.

Defendant will rely upon the points and authorities served and filed in support of motion to quash and set aside amended information and of the demurrer in the case of *United States vs. James Choumas*, No. 16945 of the records and files of the above-entitled court.

Dated: This 13th day of October, 1944.

Respectfully submitted,

E. O. LEAKE & J. J. LEAKE

By E. O. Leake

Attorneys for Defendant [11]

Received copy of within Demurrer October 16, 1944.  
Charles H. Carr, United States Atty., by Mary Wentworth.

[Endorsed]: Filed Oct. 16, 1944. [12]

[Title of District Court and Cause.]

NOTICE OF MOTION TO QUASH AND SET  
ASIDE INFORMATION AND ON DEMURRER

To the Plaintiff Above Named and to Charles H. Carr,  
Esq., United States Attorney:

You and Each of You will please take notice that defendant, William Morris, will on Monday, the 16th day of October, 1944, before the Honorable Ben Harrison, United States District Court Judge, in Room 6 of the Federal Building, Los Angeles, California, move the above-entitled court to quash and set aside the information herein.

Said motion will be made upon the ground that the said information and each count thereof fails to state facts sufficient to constitute a criminal offense; that the laws, rules and regulations upon which said information purports to be based are arbitrary, discriminatory, unreasonable, invalid, unconstitutional and void; that the United States Attorney in and for the Southern District of California, Central Division has not been authorized [13] to institute the above-entitled action by the Secretary of Agriculture, and that the Secretary of Agriculture did not and has not prior to the commencement of the above proceedings at any time approved the institution of the above-entitled action. That it does not appear that the maximum price alleged is in conformity with the rules and regulations of the Secretary of Agriculture, or with the provisions of the Agricultural Marketing Agreement Act of 1937, as amended.

That counts 1 and 2 of said information are indefinite and uncertain in that it cannot be ascertained therefrom how or in what manner the facts therein alleged were in

violation of Section 1351.1405(g) of the Maximum Price Regulation 292, as amended, or were in violation of Section 205(b) of the Emergency Price Control Act, as amended.

That counts 3 and 4 of said information are uncertain and indefinite in that it cannot be ascertained therefrom how or in what manner or by what method the alleged maximum prices therein set forth were determined.

It cannot be ascertained from said information herein whether or not count 2 is a duplicate count 1 or intends to charge a separate offense.

That it cannot be ascertained from said information whether or not count 4 is a duplicate of count 3 or intends to allege a separate offense.

Said motion will be based upon this notice of motion, the information herein, and the laws governing the same.

Defendant will reply upon the points and authorities served and filed in support of motion to quash and set aside the amended information and of the demurrer in the case of United States vs. James Choumas, No. 16945, of the records and files of the above-entitled court.

Dated: This 13th day of October, 1944.

E. O. LEAKE & J. J. LEAKE and  
MARIO PERELLI-MINETTI

By E. O. Leake

Attorneys for Defendant [14]

Received copy of within notice Oct. 16-44. Charles H. Carr, U. S. Atty., by Mary Wentworth.

[Endorsed]: Filed Oct. 16, 1944. [15]

At a stated term, to-wit: The September Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 23rd day of October in the year of our Lord one thousand nine hundred and forty-four.

Present:

The Honorable Ben Harrison, District Judge.

No. 17,242-Crim.

United States of America,

Plaintiff,

vs.

William Morris,

Defendant.

This cause coming on for hearing on motion of defendant to quash the information herein; hearing on demurrer to information, and plea of defendant to the information; E. A. Tolin, Esq., Assistant U. S. Attorney, appearing for the Government; E. O. Leake, Esq., appearing for the defendant; Wm. J. Weitzel, Court Reporter, being present and reporting the proceedings; the defendant being present on his own recognizance:

Attorney Tolin makes a statement and asks leave to file an amended information herein. The Court makes a statement. Attorney Leake makes a statement. It is ordered that motion of the Government for leave to file an amended information be, and it is, granted. [16]

[Title of District Court and Cause.]

### AMENDED INFORMATION

Comes now Charles H. Carr, United States Attorney in and for the Southern District of California, Central Division, who for the United States and in its behalf, prosecutes in his own proper person, and with leave of Court first had and obtained, gives the Court here to understand and be informed as follows, to-wit: [17]

### COUNT ONE

That on or about the 27th day of October 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the district aforesaid and in the central division thereof, and within the jurisdiction of this Court, the defendant William Morris violated the provisions of the Emergency Price Control Act of 1942 as amended, in that he did knowingly, wilfully and unlawfully make an entry false in a material respect, in Morris Bros. Fruit Co.'s copy of a statement showing the sale to Aldrich & Company, 14 South Water Market, Chicago, Illinois, of five hundred and eighty-two (582) boxes of oranges for the price of Four Dollars and Fifty Cents (\$4.50) per box, or a total sum of Two Thousand Six Hundred and Nineteen Dollars (\$2619.00), whereas the actual price charged for the sale of said oranges at said time and place was an average of Five Dollars and Fifty Cents (\$5.50) per box, or a total sum of Three Thousand Two Hundred and One Dollars (\$3201.00), which fact as to the price charged for said sale of said oranges was known to the defendant at the time of said entry, and said entry was false at the time of making said record, and said record was a document required to be kept under the provisions of Section 1351.1405(g) of Maximum Price Regulation

292, as amended, (8 Fed. Reg. 135 and 8 Fed. Reg. 543) which was promulgated pursuant to the provisions of Section 202 of the Emergency Price Control Act of 1942, / which Regulation 292, as amended had been approved by the Secretary of Agriculture [LRY J] as amended; in violation of Section 205(b) of the Emergency Price Control Act, as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [18]

## COUNT TWO

That on or about the 27th day of October 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the district aforesaid and in the central division thereof, and within the jurisdiction of this Court the defendant William Morris violated the provisions of the Emergency Price Control Act of 1942 as amended, in that he did knowingly, wilfully and unlawfully make an entry false in a material respect, in Morris Bros. Fruit Co.'s copy of a statement showing the sale to Aldrich & Company, 14 South Water Market, Chicago, Illinois, of five hundred and eighty-two (582) boxes of oranges for the price of Four Dollars and Fifty Cents (\$4.50) per box, or a total sum of Two Thousand Six Hundred and Nineteen Dollars (\$2619.00), whereas the actual price charged for the sale of said oranges at said time and place was an average of Five Dollars and Fifty Cents (\$5.50) per box, or a total sum of Three Thousand Two Hundred and One Dollars (\$3201.00), which fact as to the price charged for said sale of said oranges was known to the defendant at the time of said entry, and said entry



was false at the time of making said record, and said record was a document required to be kept under the provisions of Section 1351.1405(g) of Maximum Price Regulation 292, as amended, (8 Fed. Reg. 135 and 8 Fed. Reg. 543) which was promulgated pursuant to the provisions of Section 202 of the Emergency Price Control Act which Regulation 292, as amended had been approved by the Secretary of Agriculture [LRY J] of 1942, / as amended; in violation of Section 205(b) of the Emergency Price Control Act, as amended, being a separate and distinct transaction from that pleaded in Count One of this Information, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [19]

## COUNT THREE

### I.

Louis, Morris, William Morris and Andrew Morris, co-partners, doing business as Morris Bros. Fruit Co., at all times herein mentioned were intermediate sellers, classified as cash-and-carry wholesalers as defined in Section 1351.1405 of Maximum Price Regulation 292, as amended (8 Fed. Reg. 135 and 8 Fed. Reg. 343).

### II.

On or about the 27th day of October 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid and within the jurisdiction of this Court, defendant William Morris, acting as an employee, agent and co-partner of said Mor-

ris Bros. Fruit Co., a co-partnership, violated the provisions of the Emergency Price Control Act of 1942, as amended, in that he did knowingly, wilfully and unlawfully agree to sell, offer to sell and did sell to Aldrich & Company, 14 South Water Market, Chicago, Illinois, a carload of oranges, consisting of five hundred and eighty-two (582) boxes of packed wrapped oranges, cash-and-carry Los Angeles, California, at a price higher than the maximum price established by Maximum Price Regulation No. 292, as amended, to-wit: The sum of Three Thousand Two Hundred and One Dollars (\$3201.00), or an average price per box of Five Dollars and Fifty Cents (\$5.50); that the maximum price permitted in Maximum Price Regulation 292, as amended, (8 Fed. Reg. 135, 8 Fed. Reg. 2869 and 8 Fed. Reg. 6134) for said sale of said packed wrapped oranges, was Four Dollars and Forty-nine Cents (\$4.49) per box, or a total sum of Two Thousand Six Hundred and Thirteen Dollars and Eighteen Cents (\$2613.18) which was the maximum price permitted for said sale of said carload of said oranges; in violation of Section 1351.1401 of said Maximum Price

which Regulation 292, as amended had been approved by the Secretary of Agriculture [LRY J] Regulation 292, as amended, / issued pursuant to the provisions of the Emergency Price Control Act of [20] 1942, as amended, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942). [21]



## COUNT FOUR

## I.

Louis Morris, William Morris and Andrew Morris, co-partners, doing business as Morris Bros. Fruit Co., at all times herein mentioned were intermediate sellers, classified as cash-and-carry wholesalers as defined in Section 1351.1405 of Maximum Price Regulation 292, as amended (8 Fed. Reg. 135 and 8 Fed. Reg. 343).

## II.

On or about the 27th day of October 1943, in the City of Los Angeles, County of Los Angeles, State of California, in the district and division aforesaid and within the jurisdiction of this Court, defendant William Morris, acting as an employee, agent and co-partner of said Morris Bros. Fruit Co., a co-partnership, violated the provisions of the Emergency Price Control Act of 1942, as amended, in that he did knowingly, wilfully and unlawfully agree to sell, offer to sell and did sell to Aldrich & Company, 14 South Water Market, Chicago, Illinois, a carload of oranges, consisting of five hundred and eighty-two (582) boxes of packed wrapped oranges, cash-and-carry Los Angeles, California, at a price higher than the maximum price established by Maximum Price Regulation No. 292, as amended, to-wit: the sum of Three Thousand Two Hundred and One Dollars (\$3201.00), or an average price per box of Five Dollars and Fifty Cents (\$5.50); that the maximum price permitted in Maximum Price Regulation 292, as amended, (8 Fed. Reg. 135, 8 Fed. Reg. 2869 and 8 Fed. Reg. 6134) for said sale of said

packed wrapped oranges, was Four Dollars and Forty-nine Cents (\$4.49) per box, or a total sum of Two Thousand Six Hundred and Thirteen Dollars and Eighteen Cents (\$2613.18) which was the maximum price permitted for said sale of said carload of said oranges; in violation of Section 1351.1401 of said Maximum Price Regulation 292, as amended, issued pursuant to the provisions of the Emergency Price Control Act of 1942, as which Regulation 292, as amended had been approved by the Secretary of Agriculture [LRY J] amended, / being a separate and distinct transaction from that pleaded in Count Three of this [22] Information, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America (Emergency Price Control Act of 1942, Pub. L. 421, 77th Cong. 2d Sess., 56 Stat. 23, January 30, 1942).

Wherefore, said United States Attorney prays that process of this Court be issued against said defendant and that he be dealt with according to law.

CHARLES H. CARR

United States Attorney

By Charles H. Veale

Assistant United States Attorney [23]

[Verified.]

[Endorsed]: Filed Nov. 1, 1944. [24]

[Title of District Court and Cause.]

NOTICE OF MOTION TO QUASH AND SET  
ASIDE AMENDED INFORMATION

To the Plaintiff Above Named and to Charles H. Carr,  
Esq., United States Attorney:

You and Each of You will please take notice that defendant William Morris, will on Monday, the 13th day of November, 1944, before the Honorable Ben Harrison, United States District Court Judge, in Room 6 of the Federal Building, Los Angeles, California, move the above-entitled court to quash and set aside the amended information herein.

Said motion will be made upon the ground that the said amended information and each count thereof fails to state facts sufficient to constitute a criminal offense; that the laws, rules and regulations upon which said information purports to be based are arbitrary, discriminatory, unreasonable, invalid, unconstitutional and void; that it does not appear that the United States Attorney in and for the Southern District of California, Central [25] Division has been authorized to institute the above-entitled action by the Secretary of Agriculture, or that the Secretary of Agriculture did prior to the commencement of the above proceedings at any time approve the institution of the above-entitled action. That it does not appear that the maximum price alleged is in conformity with the rules and regulations of the Secretary of Agriculture, or with the provisions of the Agricultural Marketing Agreement Act of 1937, as amended.

That counts 1 and 2 of said amended information are indefinite and uncertain in that it cannot be ascertain

therefrom how or in what manner of the facts therein alleged were in violation of Section 1351.1405(g) of the Maximum Price Regulation 292, as amended, or were in violation of Section 205(b) of the Emergency Price Control Act, as amended.

That counts 3 and 4 of said amended information are uncertain and indefinite in that it cannot be ascertained therefrom how or in what manner or by what method the alleged maximum prices therein set forth were determined.

Said motion will be based upon this notice of motion, the amended information herein, and the laws governing the same.

Defendant will rely upon the points and authorities served and filed in support of motion to quash and set aside the 2nd amended information and of the demurrer in the case of United States vs. James Choumas, No. 16945, of the records and files of the above-entitled court.

Dated: This 8th day of November, 1944.

E. O. LEAKE & J. J. LEAKE and  
MARIO PERELLI-MINETTI

By E. O. Leake

Attorneys for Defendant [26]

Received copy of the within Notice of Motion, etc., this 9th day of November, 1944. Charles H. Carr, U. S. Atty., by M. Wentworth.

[Endorsed]: Filed Nov. 9. 1944. [27]

[Title of District Court and Cause.]

DEMURRER TO AMENDED INFORMATION

Comes now defendant above named, through his counsel, E. O. Leake, and demurring to the amended information, for cause of demurrer states:

I.

That said amended information fails to state facts sufficient to constitute a criminal offense.

II.

That count 1 of said amended information fails to state facts sufficient to constitute a criminal offense.

III.

That count 2 of said amended information fails to state facts sufficient to constitute a criminal offense.

IV.

That count 3 of said amended information fails to state facts sufficient to constitute a criminal offense. [28]

V.

That count 4 of said amended information fails to state facts sufficient to constitute a criminal offense.

Defendant will rely upon the points and authorities served and filed in support of motion to quash and set aside the 2nd amended information and of the demurrer thereto in the case of *United States v. James Choumas*, No. 16945 of the records and files of the above-entitled court.

Dated: This 8th day of November, 1944.

E. O. LEAKE & J. J. LEAKE and  
MARIO PERELLI-MINETTI

By E. O. Leake

Attorneys for Defendant [29]

Received copy of the within Demurrer to Amended Information this 9th day of November, 1944. Charles H. Carr, U. S. Atty., by M. Wentworth.

[Endorsed]: Filed Nov. 9, 1944. [30]

At a stated term, to-wit: The September Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 6th day of November in the year of our Lord one thousand nine hundred and forty-four.

Present:

The Honorable Ben Harrison, District Judge.

No. 17,242-Crim.

United States of America,  
Plaintiff,

vs.

William Morris,  
Defendant.

This cause coming on for arraignment and plea of the defendant William Morris to the amended information herein; Ray H. Kinnison, Esq., Assistant U. S. Attorney, appearing for the Government; E. O. Leake, Esq., appearing for the defendant; Eloise Mellor, Court Reporter, being present and reporting the proceedings; the defendant being absent:

It is ordered that this cause be, and it hereby is, continued to November 13, 1944, at 9:30 A. M., for arraignment and plea. [31]

At a stated term, to-wit: The September Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 13th day of November in the year of our Lord one thousand nine hundred and forty-four.

Present:

The Honorable Ben Harrison, District Judge.

No. 17,242-Crim.

United States of America,

Plaintiff,

vs.

William Morris,

Defendant.

This cause coming on for (1) hearing motion to quash and set aside Amended Information, (2) demurrer to Amended Information, and (3) plea to Amended Information; E. A. Tolin, Assistant U. S. Attorney, appearing as counsel for the Government; E. O. Leake, Esq., appearing as counsel for the defendant William Morris, who is absent on his own recognizance; and Myrtle Bennallack, Court Reporter, being present and reporting the proceedings:

The Court makes a statement and Attorney Tolin makes a statement. It is ordered that the cause be, and it hereby is, continued to November 27, 1944, at 9:30 A. M., for the said proceedings. [32]

[Title of District Court and Cause.]

WAIVER BY DEFENDANT OF RIGHT TO BE  
PRESENT IN COURT

The above-named defendant hereby specifically waives the right to be personally present in court at all court hearings, except the trial of the action, and does hereby consent that he may be represented by his counsel, E. O. Leake, at all of such hearings without the necessity of his being personally present.

Dated: This 6th day of November, 1944.

William Morris

Defendant

E. O. Leake, attorney for the above-named defendant, does hereby approve the foregoing waiver.

Dated: This 6th day of November, 1944.

E. O. Leake

Attorney for Defendant

[Endorsed]: Filed Nov. 21, 1944. [33]



At a stated term, to-wit: The September Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 27th day of November in the year of our Lord one thousand nine hundred and forty-four.

Present:

The Honorable Ben Harrison, District Judge.

No. 17,242-Crim.

United States of America,

Plaintiff,

vs.

William Morris,

Defendant.

This cause coming on for (1) hearing motion to quash and set aside Amended Information, (2) demurrer to same, and (3) plea of defendant William Morris; E. A. Tolin, Assistant U. S. Attorney, appearing as counsel for the Government; E. O. Leake, Esq., appearing as counsel for the said defendant, who is absent on his own recognizance; and H. P. Fursdon, Court Reporter, being present and reporting the proceedings:

It is ordered that (1) motion to quash and set aside Amended Information be, and it is, denied and exception allowed; and that (2) demurrer to same be, and it is, overruled and exception allowed.

Attorney Leake enters plea of not guilty in behalf of the said defendant to each count of the Amended Information.

It is ordered that the cause be, and it hereby is, set for trial on January 3, 1945, at 10 A. M., before Judge Yankwich. [34]

At a stated term, to-wit: The September Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 3rd day of January in the year of our Lord one thousand nine hundred and forty-five.

Present:

The Honorable Leon R. Yankwich, District Judge.

No. 17,242-Crim.

United States of America,  
Plaintiff,

vs.

William Morris,  
Defendant.

This cause coming on for trial on Amended Information; E. A. Tolin, Assistant U. S. Attorney, appearing as counsel for the Government; E. O. Leake, Esq., appearing as counsel for the defendant, William Morris, who is present; and Myrtle Bennallack, Court Reporter, being present and reporting the testimony and the proceedings, and both sides answering ready,

It is ordered that a jury be drawn, whereupon, the clerk draws the names of the following twelve prospective jurors who take seats in the jury box: Edward Heim, F. A. Gross, W. J. Fairchild, W. C. Rockwell, Harbin F. Hunter, Thomas J. McGowan, Nancy Fallis, Arthur G. Wilson, Doyle T. McDaniel, Alfred C. Danz, Walter E. Deutsch, and Will B. Haines. The said jurors are examined by the Court for cause and by Attorneys Tolin

and Leake for cause. The Government passes peremptory challenge.

Nancy Fallis is excused on defendant's peremptory challenge and it is ordered that another name be drawn, whereupon, the clerk draws the name of Helen R. MacRacken who is examined by the Court for cause and by Attorney Leake for cause. The Government passes peremptory challenge.

Will B. Haines is excused by the defendant on second peremptory challenge and it is ordered that another name be drawn, whereupon the clerk draws the name of Howard S. Nourse who is examined by the Court for cause.

There being no further peremptory challenges the jurors now in the box are accepted and sworn as the jury for the trial of this cause, viz.: [35]

### THE JURY

- |                      |                        |
|----------------------|------------------------|
| 1. Edward Heim       | 7. Helen R. MacCracken |
| 2. F. A. Gross       | 8. Arthur G. Wilson    |
| 3. W. J. Fairchild   | 9. Doyle T. McDaniel   |
| 4. W. C. Rockwell    | 10. Alfred C. Danz     |
| 5. Harbin F. Hunter  | 11. Walter E. Deutsch  |
| 6. Thomas J. McGowan | 12. Howard S. Nourse   |

It is ordered that the jurors not impaneled for the trial of this cause be, and they hereby are, excused until January 4, 1945, at 10 A. M.

Attorney Tolin, in behalf of the Government, makes opening statement. Counsel for the defendant waives opening statement. Reading of the Information is waived.

The Court admonishes the jury that during the progress of this trial and the recesses therein they are not to speak

to anyone or permit anyone to speak to them about this cause or any matter or thing therewith connected, that until said cause is finally submitted to them for their deliberation under the instructions of the Court they are not to speak to each other about this cause, or any matter or thing therewith connected, or form or express any opinion concerning the merits of the trial until it is finally submitted to them, and declares a recess for a few minutes.

Court reconvenes and all being present as before including the jury, the defendant and counsel, and the reporter, L. L. Collum is called, sworn, and testifies and Attorney Leake objects to introduction of evidence on grounds that the Information is insufficient.

Counsel stipulate that the jury has been admonished and the jury is excused temporarily, and they retire while counsel discuss the legal question arising from the objection. Objection to introduce testimony is overruled.

Attorney Tolin asks leave to amend the Information and it is so ordered and the Information is amended by interlineation as follows:

As to Count 1, line 23, after "1942" insert "which regulation 292 as amended had been approved by the Secretary of Agriculture;

As to Count 2, line 23, page 4, after the word "Amended";

As to Count 3, line 31, page 5, after the word "Amended";

As to Count 4, line 31, page 7, after the word "Amended";

make the same insertion as after Count 1; and the said changes are initialed by the Court. It is stipulated that

the proceedings hereto- [36] fore had were on the Amended Information as amended.

The jury is called in and all being present as before, including the defendant and counsel, Witness Collum resumes the stand and testifies on direct examination by Attorney Tolin. There is no cross-examination.

F. S. Gunther is called, sworn, and testifies for the Government. There is no cross-examination. Earl S. Hans is called, sworn, and testifies for the Government. U. S. Exhibit 1 is offered and admitted in evidence.

At 12:15 P. M. the jury is reminded of the admonition heretofore given and the Court declares a recess until 2 P. M. At 2:10 P. M. court reconvenes in this case and all being present as before, including the jury, the defendant, and counsel, Roderick H. Mohr is called, sworn, and testifies for the Government and is cross-examined by Attorney Leake.

Louis Morris is called, sworn, and Attorney Leake objects to this witness testifying on the ground that his testimony might incriminate him. U. S. Exhibits 2 and 3 are marked for identification. Witness Louis Morris is cross-examined by Attorney Leake.

Ann L. Joseph is called, sworn, and testifies for the Government on direct examination, on cross-examination by Attorney Leake, and on direct examination by Attorney Tolin.

Antonio Arrigo is called, sworn, and testifies for the Government.

U. S. Exhibits 4, 5, 6, 7, 8, 9 are marked for identification.

U. S. Exhibits 2, 3, 4, 5, 6, 7, 8, 9 for identification are offered and received and marked in evidence.

Witness Antonio Arrigo is cross-examined by Attorney Leake.

Defendant's Exhibits A and B are offered and admitted in evidence.

Witness Antonio Arrigo testifies further on re-direct examination by Attorney Tolin.

The Government rests. At 3:25 P. M. it is stipulated that the jury is admonished and court recesses for a few minutes. At 3:40 P. M. court reconvenes and all being present as before, except the jury, Attorney Leake moves for a directed verdict or dismissal on the grounds of insufficiency of evidence. [37]

Attorney Tolin argues in opposition to motions. Attorney Leake argues further. The Court grants motion to dismiss as to counts 3 and 4 on the grounds that the Government has not shown basic prices, and overrules motion as to counts 1 and 2 and exceptions are noted.

At 4:27 P. M. the jury come into court and the Court announces the dismissal of counts 3 and 4.

William Louis Morris is called, sworn, and testifies in his own behalf. Defendant's Exhibit C is offered and admitted in evidence. Witness William Louis Morris is cross-examined by Attorney Tolin.

The jury is reminded of the admonition heretofore given and court recesses for a few minutes. At 5 P. M. court reconvenes herein and all being present as before, including the jury, the defendant, and counsel, the jury is reminded of the admonition heretofore given and the Court declares a recess in the trial of this cause until 9:30 A. M., January 4, 1945. [38]

At a stated term, to-wit: The September Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 4th day of January in the year of our Lord one thousand nine hundred and forty-five.

Present:

The Honorable Leon R. Yankwich, District Judge.

No. 17,242-Crim.

United States of America,

Plaintiff,

vs.

William Morris,

Defendant.

This cause coming on at 9:45 A. M. for further trial of defendant William Morris; E. A. Tolin, Assistant U. S. Attorney, appearing as counsel for the Government; E. O. Leake, Esq., appearing as counsel for the said defendant, who is present; and Myrtle Bennallack, Court Reporter, being present and reporting the testimony and the proceedings:

Andrew Morris is called, sworn, and testifies for the defendant, is cross-examined by Attorney Tolin, and testifies further on re-direct examination by Attorney Leake.

Anthony Arrigo, heretofore sworn, resumes the stand and testifies further for the Government, is questioned by the Court, and cross-examined by Attorney Leake. The Government rests.

At 10:10 A. M. it is stipulated that the jury is admonished and the jury retires. Attorney Leake sug-



gests that approval of the Secretary of Agriculture has not been proven. The Federal Register is produced and approval is found. Said motion is denied and exception noted.

At 10:25 A. M. the jury is called back into court and all being present as before including the defendant and counsel, at 10:25 A. M. Attorney Tolin argues in behalf of the Government; at 10:50 A. M. Attorney Leake argues for the defendant; at 10:58 A. M. Attorney Tolin argues for the Government in rebuttal; and at 11 A. M. the Court instructs the jury on the law of this case and there are no exceptions to the charge.

At 11:20 A. M. Bailiffs Fuller and Turner are sworn to take charge of the jury during its deliberation upon a verdict.

Attorney Leake, in the presence of the jury, excepts to the failure of the Court to give requested instructions 3, 4, 5, and 6. At 11:22 A. M. [39] Bailiffs Fuller and Turner are again sworn to care for the jury and the jury retires.

At 11:55 A. M. the jury returns into court and the defendant and counsel being present, the jury is asked if they have agreed upon a verdict and the Foreman replies they have and verdict is presented and read, and it is ordered that the said verdict be filed and spread upon the minutes, the said verdict as filed being as follows:

\* \* \* \* \*

It is ordered that the cause be, and it hereby is, continued to January 8, 1945, at 2 P. M., for sentence, and that meantime the cause be referred to the Probation Officer for investigation and report.

The jury is discharged and excused until January 5, 1945, at 9:45 A. M. [40]



[Title of District Court and Cause.]

### VERDICT

We the jury in the above entitled cause find the defendant William Morris, Guilty as charged in the first count of the amended information, and Guilty as charged in the second count of the amended information.

Los Angeles, California

January 4, 1945

Howard S. Nourse

Foreman of the Jury.

[Endorsed]: Filed Jan. 4, 1945. [41]

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[Title of District Court and Cause.]

### NOTICE OF MOTION FOR NEW TRIAL

Notice Is Hereby Given that defendant above-named moves the above-entitled court that a new trial be granted in the above-entitled matter upon the following grounds:

1. Insufficiency of the evidence to justify the verdict.
2. Error in law occurring at the trial and excepted to by defendant.

Defendant specifies the following particulars wherein the evidence was insufficient to justify the verdict:

a. The evidence was insufficient to establish that the copy of the statement, Government's Exhibits 2 & 3, introduced into evidence was a record customarily kept relating to prices charged for citrus fruits.

b. The evidence was insufficient to establish the kind and character of records customarily kept relating to the prices charged for citrus fruits. [42]

c. The evidence was insufficient to establish the fact that Morris Bros. Fruit Co. kept a copy of the said statement above mentioned.

D. The evidence was insufficient to establish that any false entry was made in any record kept by Morris Bros. Fruit Co. relating to the prices which it charged for citrus fruit.

The court erred in the following rulings during the trial:

A. The court erred in failing to direct the jury to find the defendant "Not Guilty" or to dismiss Counts One and Two of the Second Amended Information at the close of the Government's case.

B. The court erred in failing to instruct the jury to find the defendant "Not Guilty" or to order dismissal of Counts One and Two of the Second Amended Information at the close of the evidence.

Said motion will be made upon the Second Amended Information, the defendant's plea thereto, all papers and records on file herein, and the minutes of the court.

Dated: January 8, 1944.

MARIO PERELLI-MINETTI and  
E. O. LEAKE & J. J. LEAKE

By E. O. Leake

Attorneys for Defendant William Morris [43]

Received copy of the within Notice of Motion for New Trial this 8th day of January, 1945. Charles H. Carr, by Wm. Ritzi, Attorney for Plaintiff.

[Endorsed]: Filed Jan. 8, 1945. [44]

At a stated term, to-wit: The September Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 8th day of January in the year of our Lord one thousand nine hundred and forty-five.

Present:

The Honorable Leon R. Yankwich, District Judge.

No. 17,242-Crim.

United States of America,  
Plaintiff,

vs.

William Morris,  
Defendant.

This cause coming on for (1) hearing on motion for a new trial, and (2) hearing Probation Officer's report and for sentence on counts 1 and 2 of the amended information; Wm. Ritzi, Assistant U. S. Attorney, appearing as counsel for the Government; E. O. Leake, Esq., appearing as counsel for the defendant, William Morris, who is present; and Myrtle Bennallack, Court Reporter, being present and reporting the proceedings:

Attorney Leake presents motion for a new trial and the said motion is denied and exception noted. Attorney Leake makes a statement in behalf of the defendant.

The Court pronounces sentence upon the defendant as follows:

District Court of the United States  
Southern District of California  
Central Division.

No. 17242. Criminal information in 4 counts for violation Emergency Price Control Act of 1942 of U. S. C., Title Pub. L. 421. 77th Cong. 2nd Sess., 56 Stat. 23, January 30, 1942. Secs. Maximum Price reg. 292 as amended. (8 Fed. Reg. 135 and 543.)

United States

v.

William Morris.

### JUDGMENT AND COMMITMENT

On this 8th day of January, 1945, came the United States Attorney, and the defendant William Morris appearing in proper person, and with counsel and

The defendant having been convicted on verdict of the jury of the offenses charged in the first and second counts in the above-entitled cause, to wit: Twice, on Oct. 27th, 1943 did unlawfully make a false entry in a material respect in a copy of a statement showing the sale to Aldrich & Co., 14 South Water St., Chicago, Illinois, of the price paid for 582 boxes of oranges, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of six months on the first count of the information, and shall pay to the United States of America a fine in the sum of \$2500.00 on the second count of the information.

It is Further Ordered that the defendant have a stay of execution of judgment for two days.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) Leon R. Yankwich  
United States District Judge.

Filed this 8th day of January, 1945.

(Signed) Edmund L. Smith,  
Clerk,

(By) Louis J. Somers  
Deputy Clerk. [46]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Name and address of appellant: William Morris, 766 Market Court, Los Angeles 21, California.

Name and address of appellant's attorneys: Mario Perelli-Minetti and E. O. Leake & J. J. Leake, 901 Chester Williams Building, Los Angeles 13, California.

Offense: Violation two counts of Section 205b of the Emergency Price Control Act of 1942, as amended.

Brief description of judgment and sentence: Count One, six months in jail; Count Two, \$2500.00 fine.

Defendant at liberty on own recognizance.

I, the above-named appellant hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below:

Pursuant to the Rule 5, I hereby serve notice that I do [47] not elect to enter upon the service of the sentence pending appeal.

Dated: January 8, 1944.

William Morris

Appellant

MARIO PERELLI-MINETTI and  
E. O. LEAKE & J. J. LEAKE

By E. O. Leake

Attorneys for Appellant

Grounds of Appeal:

1. The evidence is insufficient to support the verdict; the verdict is contrary to law and the evidence.

2. The court should have granted the motion for a directed verdict at the close of the Government's case and also at the close of the entire case.

3. The second amended information fails to state a public offense against the laws of the United States.

4. There is no reasonable or probable cause upon which the second amended information is based.

5. The court erred in rulings made throughout the trial in the case and at the close of the case and in its order over-ruling and denying the motion for new trial.

6. The court erred in instructions given.

7. The court erred in holding and ruling that the Act and orders pursuant thereto are not violative of the Fifth Amendment to the Constitution of the United States.

MARIO PERELLI-MINETTI and  
E. O. LEAKE & J. J. LEAKE

By E. O. Leake

Attorneys for Appellant. [48]

Received copy of the within Notice of Appeal this 9th day of January, 1945. Charles H. Carr, U. S. Attorney, by R. Mackay, Attorney for Plaintiff and Appellee.

[Endorsed]: Filed Jan. 9, 1945. [49]

At a stated term, to-wit: The September Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 9th day of January in the year of our Lord one thousand nine hundred and forty-five.

Present:

The Honorable Leon R. Yankwich, District Judge.

No. 17,242-Crim.

United States of America,  
Plaintiff,

vs.

William Morris,  
Defendant.

E. O. Leake, Esq., attorney for the defendant, now comes before the Court and states that Notice of Appeal has been filed and requests that bond on appeal be fixed and that the defendant be allowed to remain at liberty on his own recognizance.

It is ordered that the defendant may remain at liberty on his own recognizance pending appeal and that he deposit the sum of \$2,500. as a special recognizance to provide for payment of fine in the event of affirmance of conviction in the Circuit Court of Appeals for the Ninth Circuit. [50]



[Title of District Court and Cause.]

ORDER FIXING BAIL AND STAYING  
EXECUTION.

Defendant above named having filed his notice of appeal in the above-entitled court,

It Is Ordered that pending decision on said appeal, defendant remain at liberty upon his own recognizance, and that no bond be required in the premises provided that the defendant deposit the sum of Twenty-five Hundred Dollars (\$2500.00) with the Clerk of the Court to be by him held in registry pending determination of the appeal and if the appeal be dismissed or judgment affirmed to be applied by the clerk to the payment of the fine of \$2500.00.

Dated: This 10th day of January, 1945.

LEON R. YANKWICH

Approved as to form.

CHARLES H. CARR,  
United States Attorney

By James M. Carter [51]

Received copy of the within Order Fixing Bail and Staying Execution this ..... day of January, 1945.

CHARLES H. CARR,  
United States Attorney

By .....  
Attorney for Plaintiff

[Endorsed]: Filed Jan. 10, 1945. [52]

[Title of District Court and Cause.]

AFFIDAVIT OF E. O. LEAKE, ESQ., IN SUPPORT  
OF ORDER EXTENDING TIME WITHIN  
WHICH TO PREPARE, SETTLE AND FILE  
BILL OF EXCEPTIONS, ETC.

State of California,  
County of Los Angeles—ss.

E. O. Leake, being first duly sworn, deposes and says:

That he is one of the attorneys for defendant above named and has been the attorney, and the only attorney, actually engaged in the preparation of the record on appeal of the above-entitled matter.

That your affiant has been unable to complete and lodge the proposed Bill of Exceptions and Assignments of Error in connection with the appeal herein taken and to have the same settled and allowed within the time allowed by law for the reason that within the last 30 days affiant has been confined to his home at different intervals suffering from a severe cold, and there being no other attorney in the office of his law firm of E. O. Leake & J. J. Leake, your affiant has been compelled to handle all legal [53] matters in said office.

That the Honorable Leon R. Yankwich, the judge who tried the above-entitled action has been absent in other divisions of this court since on or about January 11, 1945, and affiant is now informed and believes and therefore states that the said Honorable Leon R. Yankwich is at Fresno, California, and will not return until on or about March 1, 1945.

Affiant has practically completed preparation of said proposed Bill of Exceptions and will be able to serve and lodge the said proposed Bill of Exceptions on or be-

fore Tuesday, February 13, 1945, and respectfully prays that the court make its order extending the time for the serving and lodging of said proposed Bill of Exceptions and Assignments of Error herein up to and including February 13, 1945, and that the United States of America, plaintiff herein, may have up to and including the 28th day of February, 1945, within which to serve and lodge any proposed objections, amendments or additions to said proposed Bill of Exceptions and proposed Assignments of Error, and that defendant William Morris may have up to and including March 15, 1945, within which to settle and have filed his Bill of Exceptions and Assignments of Error.

E. O. LEAKE

Subscribed and sworn to before me this 7th day of February, 1945.

(Seal)

WILLIAM M. CRANDALL

Notary Public in and for said County and State

The foregoing application on the part of defendant is hereby approved.

Dated: This 7th day of February, 1945.

CHARLES H. CARR,

United States Attorney

By Ray H. Kinnison

Attorney for United States

Received copy of the within Affidavit of E. O. Leake, etc., this 7th day of February. Charles H. Carr, United States Attorney, by ..... Attorney for plaintiff.

[Endorsed]: Filed Feb. 7, 1945. [54]

[Title of District Court and Cause.]

ORDER EXTENDING TIME UNDER WHICH TO  
PREPARE, SETTLE AND FILE BILL OF EX-  
CEPTIONS, ETC.

Good cause appearing therefor, and on application of E. O. Leake, Esq., one of the attorneys for defendant and appellant, William Morris, and conforming to the requirements of Rule 9 of Supreme Court Rules of Practice and Procedure in criminal cases;

It Is Ordered that defendant and appellant, William Morris, may have up to and including the 13th day of February, 1945, within which to prepare, serve and lodge his proposed Bill of Exceptions and Assignments of Error; that the United States of America, plaintiff herein, may have to and including the 28th day of February, 1945, within which to prepare, serve and lodge any proposed objections, amendments or additions to the proposed Bill of Exceptions and Assignments of Error; and that defendant and appellant, William Morris, may have up to and including the 15th day of March, 1945, within which to have settled and filed his Bill of Exceptions and Assignments of Error in the above matter.

Dated: February 7th, 1945.

PAUL J. McCORMICK

Judge of U. S. District Court

Received copy of the within Order, etc. this ..... day of February, 1945. Charles H. Carr, United States Attorney, by ....., Attorney for Plaintiff.

[Endorsed]: Filed Feb. 7, 1945. [55]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 59 inclusive contain full, true and correct copies of: Information; Minute Order Entered October 5, 1944; Demurrer to Information; Notice of Motion to Quash and Set Aside Information and on Demurrer; Minute Order Entered October 23, 1944; Amended Information; Notice of Motion to Quash and Set Aside Amended Information; Demurrer to Amended Information; Minute Orders Entered November 6, 1944 and November 13, 1944 respectively; Waiver by Defendant of Right to be Present in Court; Minute Orders Entered November 27, 1944, January 3, 1945 and January 4, 1945 respectively; Verdict; Notice of Motion for New Trial; Minute Order Entered January 8, 1945; Judgment and Commitment; Notice of Appeal; Minute Order Entered January 9, 1945; Order Fixing Bail and Staying Execution; Affidavit of E. O. Leake in Support of Order Extending Time within which to Prepare, Settle and File Bill of Exceptions; Order Extending Time to Settle Bill of Exceptions and Praeceptum which, together with Original Bill of Exceptions, Original Exhibits and Original Assignment of Errors constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$17.80 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 23 day of March, 1945.

(Seal)

EDMUND L. SMITH,  
Clerk

By Theodore Hocke,  
Chief Deputy Clerk.

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[Title of District Court and Cause.]

### DEFENDANT'S ASSIGNMENTS OF ERROR.

Comes now the defendant and appellant in the above-entitled and numbered cause and files the following assignments of error upon which he will rely in the prosecution of this, his appeal herewith petitioned for in said cause from the judgment and sentence of this court entered January 8, 1945.

#### Assignment of Error No. 1

The court erred in denying the defendant's motion to quash and set aside the amended information made by this defendant on the 27th day of November, 1944, as to Counts 1, 2, 3 and 4 of said amended information, which motion was based upon the following grounds:

That the said amended information and each count thereof fails to state facts sufficient to constitute a criminal offense; that the laws, rules and regulations upon which said amended information purports to be based are arbitrary and discriminatory, unreasonable, invalid, unconstitutional and void; that it does not appear that the United States attorney in and for the Southern District of California, Central Division has been authorized to in-



stitute the above-entitled action by the Secretary of Agriculture or that the Secretary of Agriculture did prior to the commencement of the above proceedings at any time approve the institution of the above-entitled action. That it does not appear that the maximum price alleged is in conformity with the rules and regulations of the Secretary of Agriculture or with the provisions of the Agricultural Marketing Agreement Act of 1937, as amended.

That Counts 1, and 2 of said amended information are indefinite and uncertain in that it cannot be ascertained therefrom how or in what manner the facts therein alleged were in violation of Section 1351.1405(g) of the Maximum Price Regulation 292, as amended, or were in violation of Section 205(b) of the Emergency Price Control Act, as amended.

That Counts 3 and 4 of said amended information are uncertain and indefinite in that it cannot be ascertained therefrom how or in what manner or by what method the alleged maximum prices therein set forth were determined.

That defendant duly excepted to said ruling of the trial court.

### Assignment of Error No. 2

That the court erred in overruling the demurrer of defendant to Counts 1, 2, 3 and 4 of the amended information, which demurrer was based upon the following grounds and to which ruling defendant duly excepted:

(a) That said amended information fails to state facts sufficient to constitute a criminal offense.

(b) That Count 1 of said amended information fails to state facts sufficient to constitute a criminal offense.

(c) That Count 2 of said amended information fails to state facts sufficient to constitute a criminal offense.

(d) That Count 3 of said amended information fails to state facts sufficient to constitute a criminal offense.

(e) That Count 4 of said amended information fails to state facts sufficient to constitute a criminal offense.

### Assignment of Error No. 3

The court erred in overruling defendant's objection to the introduction of any evidence made at the opening of Government's case, which said motion was made upon the following grounds:

Mr. Leake: If the court please, at this time I desire to make an objection to the introduction of any evidence on the ground that the information doesn't state the facts sufficient to constitute a cause of action. Following that up a little more in detail, it totally lacks any allegation bringing it within the provisions of the Price Control Act, particularly Section 3 of the Act requiring the prior approval of the Secretary of Agriculture. That applies to all four counts.

The second point which I propose to raise is regarding the allegations of the false entry, and along about line 19 it says, "and said record . . . referring to this information . . . was a document . . ."

The Court: Let me look at it. Where is it?

Mr. Leake: Line 19. After reciting "making a false entry," it says: "and said record was a document required to be kept under the provisions of Section 1351.1405(g) of Maximum Price Regulation 292, as amended," and so forth.



Now, the section referred to provides as follows:

“Every intermediate seller selling citrus fruits shall:

“(1) Make and preserve for examination by the Office of Price Administration for so long as the Emergency Price Control Act of 1942, as amended, remains in effect, records of the same kind as he has customarily kept relating to the prices which he charges for each item of citrus fruits after the effective date of this regulation, and, in addition, records showing as precisely as possible, the basis upon which he determined maximum prices for each item.”

Now, there is no allegation in Count 1 or Count 2 that they formerly kept any records or that these records were not in conformity with the records customarily kept.

(After a brief discussion of the objections, the jury was excused and the argument proceeded in the absence of the jury)

The objections of defendant to the introduction of evidence was by the court overruled, whereupon the following proceedings were had:

The defendant duly excepted to the said ruling.

#### Assignment of Error No. 4

The court erred in allowing and admitting into evidence Government's Exhibit No. 1, being a group of invoices, the first document of which bears the number 35642 relating to the alleged sale of oranges by California Fruit Growers Exchange to Morris Brothers Fruit Company. That defendant objected to the introduction of said Exhibit No. 1 on the ground that no proper foundation had been laid for its introduction.

Defendant's objections were overruled and defendant duly excepted.

The only foundation for the admission of said Exhibit No. 1 consisted of the testimony of Earl S. Hans which was in substance as follows:

I am cashier and auditor for California Fruit Growers Exchange and have been so employed since July of 1921. I have brought with me records of the sale of oranges to Morris Brothers Fruit Company by California Fruit Growers Exchange during the week commencing October 17, 1943. These records were kept by the clerk in the ordinary course of business and as a part of the ordinary and regular records. They are kept by one of my assistants under my direction.

#### Assignment of Error No. 5

The court erred in overruling the objection of defendant to the testimony of the witness Ann L. Josephs, a former employee of Morris Brothers Fruit Company, relative to a practice or custom of said company in making up their statements. Said testimony being as follows:

Question by Mr. Tolin: Did the company have a practice or custom of making these out or was just a single one made, were they made in duplicate or triplicate or what?

Mr. Leake: I will object to that on the ground that it is irrelevant, incompetent and immaterial.

The Court: Well, I think it is admissible. She was head bookkeeper. Go ahead.

Mr. Leake: She has stated she never saw these before.

The Court: It doesn't make any difference. He is asking about a similar document. Go ahead.

To which ruling defendant duly excepted.

The substance of the testimony of the witness was as follows:

Referring to Government's exhibits 2 and 3 for identification, we made these out in duplicate only for shipment on cars. I can tell from the wording that they represent shipments on cars. When a car of fruit was sent out, we were notified from the downstairs office. They told us how many boxes of fruit would be sent at such and such a price. We made out triplicate copies of bills of lading and sent one to the customer with a statement of this kind.

#### Assignment of Error No. 6

The court erred in overruling the objection of defendant and in admitting into evidence Government's Exhibits 2 and 3, being copies of statements produced by the witness Anthony Arrigo as follows:

Mr. Tolin: I offer in evidence Exhibits No. 2 and 3, for identification.

Mr. Leake: To which we object on the ground that Exhibits 2 and 3 are incompetent, irrelevant and immaterial.

The Court: Let me see this, are those the so-called invoices or statements?

Mr. Leake: Statements.

Mr. Tolin: He testified he received them from the defendant.

The Court: Objection overruled. They may be received in evidence, marked with the numbers that they already have.

To which ruling defendant duly excepted.

## Assignment of Error No. 7

The court erred and abused its discretion in denying defendant's motion for a directed verdict as to counts 1 and 2 and for a dismissal as to counts 1 and 2 of the amended information at the close of the Government's case based on the grounds that the evidence adduced by the Government was wholly insufficient to establish the commission of the offenses charged in each of said counts.

The defendant duly excepted to the ruling of the court on said motions.

## Assignment of Error No. 8

The court erred and abused its discretion in denying defendant's motion for a directed verdict and for a motion to dismiss as to counts 1 and 2 of the amended information at the close of the evidence. Said motion was made and based upon the grounds that the evidence introduced was wholly insufficient to establish a commission of the offense charged in each of said counts 1 and 2.

The defendant duly excepted to the ruling of the court on said motions.

## Assignment of Error No. 9

The court erred in refusing to give the following instruction proposed and offered by defendant, to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

## Defendant's Proposed Instruction No. 3

An accomplice is one who aids, abets, or participates in the commission of a crime and is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

## Assignment of Error No. 10

The court erred in refusing to give the following instruction proposed and offered by defendant, to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

## Defendant's Proposed Instruction No. 4

One who buys at a price above the maximum price fixed by the Rules and Regulations of the office of Price Administrator is equally guilty with one who sells above such prices and is an accomplice in the commission of the crime which may result from such transaction.

## Assignment of Error No. 11

The court erred in refusing to give the following instruction proposed and offered by defendant, to which refusal the defendant in the time and in the manner prescribed by law duly excepted.

## Defendant's Proposed Instruction No. 5

You are instructed that the Witness, Anthony Arrigo, is by his own testimony an accomplice of the defendant, William Morris, in this action.

## Assignment of Error No. 12

The court erred in refusing to give the following instruction proposed and offered by defendant, to which refusal the defendant within the time and in the manner prescribed by law duly excepted.

## Defendant's Proposed Instruction No. 6

The testimony of an accomplice, coming from a polluted source, should be received with caution and distrust and you should not place too much reliance thereon unless the same is corroborated by other reliable creditable testimony.

## Assignment of Error No. 13

The court erred in overruling defendant's motion for new trial based upon the grounds, first, insufficiency of the evidence to justify the verdict; and second, error in law occurring in the trial and excepted to by defendant.

Defendant duly excepted to the said ruling.

## Assignment of Error No. 14

Counts 1 and 2 of the amended information constitute a splitting of one offense into two offenses contrary to law.

## Assignment of Error No. 15

The evidence adduced by the Government conclusively shows that the matters alleged in Counts 1 and 2 of the amended information constitute but a single offense.

## Conclusion

Wherefore, the defendant, William Morris, by reason of the errors aforesaid, prays that said judgment and sentence against and upon him may be reversed and held for naught.

MARIO PERELLI-MINETTI and  
E. O. LEAKE & J. J. LEAKE

By E. O. Leake

Attorneys for Defendant

Received copy of the within Defendant's Assignments of Error this 13th day of February, 1945. Charles H. Carr, United States Attorney, by Ernest A. Tolin, Attorney for Plaintiff.

[Endorsed]: Filed Feb. 13, 1945.

[Endorsed]: Filed Mar. 26, 1945. Paul P. O'Brien, Clerk.

[Title of District Court and Cause.]

### ENGROSSED BILL OF EXCEPTIONS.

Be it remembered that on the 5th day of October, 1944, an Information was filed in the above-entitled court.

That on the 16th day of October, 1944, and before the entry of a plea, the defendant filed a demurrer to said Information and to each count thereof, and that also on said date defendant filed a motion to quash and set aside the said Information and each count thereof, and on the 23d day of October, 1944, an order was made granting leave to the Government to amend the said Information.

That on the 1st day of November, 1944, an amended information was filed.

That on the 9th day of November, 1944, defendant served and filed a notice of motion to quash and set aside said amended information.

That on the 9th day of November, 1944, and before the [1\*] entry of a plea, defendant filed a demurrer to said amended information, basing said demurrer upon the following grounds:

1. That said amended information fails to state facts sufficient to constitute a criminal offense.

2. That count 1 of said amended information fails to state facts sufficient to constitute a criminal offense.

3. That count 2 of said amended information fails to state facts sufficient to constitute a criminal offense.

4. That count 3 of said amended information fails to state facts sufficient to constitute a criminal offense.

5. That count 4 of said amended information fails to state facts sufficient to constitute a criminal offense.

\*Page numbering appearing at foot of page of original Bill of Exceptions.



That on the 27th day of November, 1944, defendant in open court pursuant to the aforementioned notice of motion to quash and set aside said amended information presented arguments on said motion, and the Government likewise presented arguments thereon, and the court thereupon made and entered its order denying said motion, to which order defendant duly excepted.

That on the 27th day of November, 1944, argument was made on said demurrer to said amended information, and the court made and entered its order overruling said demurrer, to which order defendant duly excepted.

That on the 27th day of November, 1944, defendant entered his plea of "Not Guilty" to each and every count of said amended information.

That said cause came on regularly for trial on the 3d day of January, 1945, the Honorable Leon R. Yankwich, Judge presiding, with a jury; the United States of America being represented by Ernest A. Tolin, Esq., Assistant United States Attorney; and defendant being represented by Mario Perelli-Minetti and E. O. Leake & J. J. Leake, Esqs.

That a jury was duly impaneled and sworn, after which [2] the following proceedings were had:

L. L. COLLUM,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

My name is L. L. Collum. I am employed by American—



Mr. Leake: If the court please, at this time I desire to make an objection to the introduction of any evidence on the ground that the information doesn't state the facts sufficient to constitute a cause of action. Following that up a little more in detail, it totally lacks any allegation bringing it within the provisions of the Price Control Act, particularly Section 3 of the Act requiring the prior approval of the Secretary of Agriculture. That applies to all four counts.

The second point which I propose to raise is regarding the allegations of the false entry, and along about line 19 it says, "and said record . . . 'referring to this information' . . . was a document . . ."

The Court: Let me look at it. Where is it?

Mr. Leake: Line 19. After reciting "making a false entry," it says: "and said record was a document required to be kept under the provisions of Section 1351.1405(g) of Maximum Price Regulation 292, as amended," and so forth.

Now, the section referred to provides as follows:

"Every intermediate seller selling citrus fruits shall:

"(1) Make and preserve for examination by the Office of Price Administration for so long as the Emergency Price Control Act of 1942, as amended, remains in effect, records of the same kind as he has customarily kept relating to the prices which he charges for each item of citrus fruits after the effective date of this regulation, and, in addition, records showing as precisely as possible, the basis upon which he determined maximum prices for each item."

Now, there is no allegation in count 1 or count 2 that they formerly kept any records or that these records were not in conformity with the records customarily kept.

(After a brief discussion of the objections, the jury was excused and the argument proceeded in the absence of the jury.)

The objections of defendant to the introduction of evidence was by the court overruled, whereupon the following proceedings were had:

Mr. Tolin: If the court please, I don't mean to back down from our position, but in the interests of getting on with the case, I would be glad to amend the information by interlineation.

The Court: Of course the information can be amended at any time.

Mr. Tolin: I think we might amend line 23 after the words "1942" to insert "which regulation had been approved by the Secretary of Agriculture." That would end the argument. I don't mean to say that we are not entitled to win the argument, but it would get it past this and down to the case on the merits.

The Court: My only doubt arises, Mr. Tolin, from the fact that it is customary where special authority is needed, you see, to allege the authority.

Mr. Tolin: Yes.

The Court: I think it might be the better policy to amend because we are dealing with an information which can be amended at any stage of the proceedings. With an indictment you cannot do it.

Mr. Tolin: The government would rather do that. The government moves the court for permission with re-

spect to count 1, line 23, after the figure "1942" on page 3 to amend by interlineation, inserting the following: "Which regulation 292 as amended has been approved by the Secretary of Agriculture." [4]

The Court: I will grant the motion of the government to amend so as to show that the regulation has the approval of the Secretary of Agriculture.

Mr. Tolin: I make a motion for a like amendment respecting count 2 by inserting the same words after the word "amended" on line 23 of page 4.

The Court: All right, permission is granted.

Mr. Tolin: I make a like motion regarding the amendment of count 3 on page 5, by inserting the same words after the word "amended" on line 24.

The Court: All right.

Mr. Tolin: I make a like motion with respect to count 4, by inserting the same language on page 7 at line 21 after the word "amended".

The Court: All right. I will hand you the original so as to complete the record. You may make the interlineation.

Mr. Tolin: With respect to Counts 3 and 4, I find the proper place for the interlineation is at line 31 instead of the place I indicated.

The Court: All right, permission will be granted.

Mr. Tolin: I have now interlined the original amended information in accordance with the court's permission, and have marked with a clip the pages to which it refers.

The Court: Not that it is necessary, but just to play safe, are you willing to stipulate that all the proceedings heretofore had on the amended information were had on the amended information as amended?

(Testimony of L. L. Collum)

Mr. Tolin: Yes, Your Honor.

Mr. Leake: So stipulated.

The jury was thereupon recalled to the jury box and the witness L. L. Collum resumed his testimony as follows:

I am employed by the American Fruit Growers, Inc., and have been employed since July 23. I have access to the records [5] of that company showing sale of oranges to Morris Brothers Fruit Company in this city during the week commencing October 17, 1943. I have inspected and searched those records, and I do not find that any sales were made of oranges to Morris Brothers Fruit Company during that week commencing October 17, 1943.

F. S. GUNTHER,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

My name is F. S. Gunther, I hold the same position with Mutual Orange Distributors located in Redlands; I have access to the records of their company showing the sale of oranges during the week of October 17, 1943. I am president of the Mutual Orange Distributors. The Mutual Orange Distributors did not sell any oranges to Morris Brothers Fruit Company in Los Angeles during the week commencing October 17, 1943.

EARL S. HANS,

called as a witness by and on behalf of the Government, having been first sworn, was examined and testified as follows:

I am cashier and auditor for California Fruit Growers Exchange and have been so employed since July 21. The company sells oranges to Morris Brothers Fruit Company located in Los Angeles. I have brought with me records of the sale of oranges to Morris Brothers Fruit Company by California Fruit Growers Exchange during the week commencing October 17, 1943. The records which I have are all of the records of my company showing such sales. I recognize this group of pink slips as being the records of the California Fruit Growers Exchange showing sales to Morris Brothers Fruit Company during that week. These records were kept by the clerk in the ordinary course of business and are part of the ordinary and regular records. They are kept by one of my assistants under my direction and supervision. Referring to the invoice which bears No. 35642, the figures 10/18/43 represent the actual [6] date of sale and the figures under the words "price per box" represents the price at which they were sold. Upon the bottom of the page the figures "base price \$4.08" were placed there in accordance with ceiling price regulations.

The group of papers furnished by the witness, the first one of which bears No. 35642 was then offered in evidence.

Mr. Leake: To which we object on the ground that no proper foundation has been laid.

The Court: Objection overruled. They may be received.

(Testimony of Earl S. Hans)

The documents above referred to were marked as Government's Exhibit No. 1 and were received in evidence.

Mr. Leake: May we have an exception?

The Court: All right.

The witness resuming: All these sales relate to oranges. The main office of the California Fruit Growers Exchange is located at 707 West Fifth Street, Los Angeles, California. The oranges were sold at 780 South Alameda Street, Los Angeles, and were delivered to Morris Brothers Fruit Company here in Los Angeles.

#### Cross-Examination

By Mr. Leake:

Witness: We sold oranges to Morris Brothers Fruit Company prior to these dates. I don't know of my own knowledge to whom this fruit was delivered, and I don't know whether it was resold by Morris Brothers before delivery.

R. G. MOHN,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

By Mr. Tolin:

Witness: I am employed at 780 South Alameda Street by the California Fruit Growers Exchange. That firm has a citrus auction house at that address and did have during October, 1943. I am familiar with the customs of the place and how it runs and was during October, 1943. Morris Brothers Fruit Company is a customer of

(Testimony of R. G. Mohn)

the exchange. Fruit bought by Morris Brothers firm [7] was to be loaded on their own trucks any time after the start of the auction and until two o'clock of the day of sale. I recognize Government's Exhibit No. 1. These papers are all marked by the letter "J" on the bottom of the page and in some instances by the letter "B" by the man who trucks them out on a truck.

### Cross-Examination

By Mr. Leake:

Witness: This place at 780 South Alameda Street is an auction house where fruit is sold to the highest bidder. Government's Exhibit No. 1 shows fruit sold to the Morris Brothers on the particular days specified. I do not know who bought the fruit on behalf of Morris Brothers. The fruit was delivered to the driver of the Morris Brothers' trucks.

### LOUIS MORRIS,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

### Direct Examination:

I am a member of the firm of Morris Brothers Fruit Company. I am a brother of William Morris, the defendant. I was served with a subpoena to produce the records showing purchase of oranges by Morris Brothers during the week of October 17, 1943. I have not produced the records, Bill Morris has got them. I had the girl look through the files twice after I was served with the subpoena at eleven o'clock yesterday, but she could not find



(Testimony of Louis Morris)

any records due to the fact that we have changed bookkeepers three times, and she couldn't find them. Whatever records there are, Mr. William Morris has them. When I said that the records were in the possession of Mr. William Morris I meant whatever records were there, why, Bill Morris will have them. I couldn't find any record of purchase of oranges during the week of October 17th. As to whether we purchased oranges during that time, my answer is that we had been buying oranges every day. I do not remember whether we bought any oranges from the Mutual Orange Distributors or from the American Fruit Growers during that week. We buy from all exchanges [8] every day whatever we can buy. Any records of purchases during that period were not destroyed, but I do not know where they are. The girl looked twice for them. I have never seen the records.

I do not know Mr. Arrigo, nor anyone employed by Aldrich & Company. I never saw Mr. Arrigo at Morris Brothers. I have never seen him other than in the court room. The same subpoena above referred to called for the production of the records showing the sales of oranges to Aldrich & Company, Chicago, Illinois, during the month of October, 1943. I do not have those records. Bill Morris has got them when he went to consult his lawyer, Mr. Leake. I did not turn the records over to Mr. William Morris. He got them himself. He has the same access to them that I have. We both own an interest in the company. We are partners; if you want you can call me manager. I do everything and I am supposed to be the manager every day. I am still the manager. When William Morris became involved in this case I did not



(Testimony of Louis Morris)

turn those invoices over to him so that he could take them to see his attorney. He went out and got them himself. I had access to them the same as he. I own an interest in that company, so does he.

Question: All right. I call upon you now to produce those records, please.

Mr. Leake: It appears that the witness hasn't got them, if the court please.

The Court: Well, his partner has equal access and if one partner keeps them, how am I going to force him to get in a fight with his brother? You can produce secondary evidence. Each partner has equal access to the books. A partner can't even steal from one another. The only way they settle their affairs is by an accounting!

Mr. Tolin then produced two documents which he had marked Government's Exhibit No. 2, for identification, and Government's Exhibit No. 3, for identification. The statement dated October 27, 1943, which has written on it in addition to the [9] typewritten matter the word "William" was marked Government's Exhibit No. 2 for identification, and the statement which bears the same date, differing from Exhibit No. 2 for identification is that the word "William" does not appear thereon, was marked Government's Exhibit 3 for identification.

The Witness resuming: I recognize Government's Exhibit No. 2, for identification, as being one of the regular statement forms of Morris Brothers Fruit Company. It was the custom of the company to make these up in duplicate. I never saw a duplicate of this statement. I looked for them, but they were gone.

(Testimony of Louis Morris)

Question by Mr. Tolin: You ordinarily kept the copies of all statements, and that had been the custom as long as Morris Brothers had been in business?

A. Now, when you speak of statements, I don't think that the girls in the office are making two copies. When we send a statement to the customer, only one copy is made. On invoices, we make it in two, yes.

Q. Referring to Government's Exhibit No. 2 for identification. The custom was to make a copy of that, wasn't it, or to make it in duplicate? That was the custom?

A. That was the custom.

Q. And that had been the custom so long as you had been in business?

A. Yes.

Q. That is also true of the type of paper that this Exhibit 3 for identification is, isn't it?

A. It is the same.

Witness resuming: I did not have anything to do with the making of the sale represented by either Exhibit 2 or 3 for identification. I am a stranger to that transaction.

### Cross-Examination

By Mr. Leake:

I have never seen either one of these statements marked [10] Exhibit 2 or 3 for identification before to my knowledge. I have never seen any copies of them or any originals of them to my knowledge. I do not know in this instance whether or not more than one copy was made. That is not an invoice, that kind of paper is used to send out our statements on. That is entirely different from the invoice. I was not in Los Angeles at the time of these

(Testimony of Louis Morris)

transactions. I think one car was shipped the same day of the transaction and the other one was shipped about a month and a half later.

Redirect Examination

By Mr. Tolin:

The witness examined the Government's Exhibit No. 1, being the pink tickets issued by the exchange in the auction market, and testified as follows:

I had the girl make a search for the copies of these, but she couldn't find them.

Recross-Examination

By Mr. Leake:

None of the oranges represented by the statements, Government's Exhibit No. 1, were ever in storage at La Verne.

ANN L. JOSEPH,

called as a witness by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

I was employed by Morris Brothers Fruit Company from June 14, 1943 to July 15, 1944, in the capacity of head bookkeeper. Government's Exhibits 2 and 3 I have never seen before.

Question by Mr. Tolin: Did the company have a practice or custom of making these out or was just a single one made; were they made in duplicate or triplicate or what?

(Testimony of Ann L. Joseph)

Mr. Leake: I will object to that on the ground that it is irrelevant, incompetent and immaterial.

The Court: Well, I think it is admissible. She was head bookkeeper. Go ahead.

Mr. Leake: She has stated she never saw these before.  
[11]

The Court: It doesn't make any difference. He is asking about a similar document. Go ahead.

Mr. Tolin: May the record show that the witness has before her Exhibits 2 and 3 for identification?

The Witness: We made these duplicates out only for shipment of cars. I can tell by the wording that these represent shipments of cars. When a car of fruit was sent, we were notified by the downstairs office; they told us how many boxes of fruit would be sent at such and such a price. We made out triplicate copies of bills of lading and sent one to the customer with a statement of this kind attached. Not the first one, I mean the first one was kept by the railroad, but the other was sent to the customer with the statement attached. We kept the other with a duplicate statement attached so that when it was paid we would mark that copy paid and put it back in the file so that we kept a permanent record of all these things. The company kept files of the bills of lading. I do not know how far the files went back, but I do know that there were some from the year, 1941.

(Testimony of Ann L. Joseph)

Cross-Examination

By Mr. Leake:

I never saw either one of the statements, Exhibits 2 and 3 for identification. I did not make them out. The accounts receivable clerk made these bills and sent them out. I had nothing to do with making the bills out. I do not know how many copies were made of these particular bills, Exhibits 2 and 3 for identification.

Redirect Examination

By Mr. Tolin:

I know we did some big buying during October, 1943, from California Fruit Growers and Mutual Orange Distributors. I don't know whether we bought anything in that particular week, I wouldn't remember that. I only know we dealt with those concerns.

Recross-Examination

By Mr. Leake:

I know that Morris Brothers dealt with a great many smaller firms. I do not know how many. [12]

ANTHONY ARRIGO,

called as a witness by and on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tolin:

I am a half partner of Aldrich & Company located in Chicago, Illinois. Their business is supplying oranges, potatoes and vegetables, etc., to hotels, restaurants and

(Testimony of Anthony Arrigo)

dining cars exclusively. About October 15, 1943, I called at the Morris Brothers Fruit Company here in Los Angeles. I talked to William Morris (indicating defendant). I told him I needed oranges and needed them very badly. He said yes, that he would sell me some, any amount I wanted at \$4.50 a case. I said, "That is cheap. I would like to buy some." He said, "Wait a minute. You have got to give me \$1.25 each case on the side." I said, "Oh, no, I can't pay prices like that." So, after an exchange of opinions, I left and went to San Diego for a week. So, that was the end of that conversation.

After I returned from San Diego, I saw the defendant again at the same place. I told Mr. Morris that I got in touch with my Chicago partner and he told me the plight up there was terrific, that he couldn't get any at any price, and he said to get them for whatever we had to pay, because, he said, if we can't get them I can't do business any more. There are no oranges. Get whatever you can, and pay the price. At least we will get our money back and losing a little bit of the profit would make it about right."

I told Mr. Morris I just couldn't get away from California unless I got some oranges because my partner told me we got to have them; that we couldn't operate without them. Mr. Morris said, "You are lucky anyway. By waiting a week you have saved 25 cents. It is \$1.00 even extra today."

I said, "That is fine. Give me a couple of cars and I will pay you and goodbye beautiful California." [13]

(Testimony of Anthony Arrigo)

I bought a couple of cars from Mr. William Morris. He gave me two statements. I recognize Government's Exhibits 2 and 3 for identification as being those statements. That little mark up here on Government's Exhibit 2 for identification which says, "William" I placed there. I wanted to remember who I was dealing with because I knew there was more than one brother, and I wrote that there myself. All of the rest of the statements were written by someone at Morris Brothers Fruit Company. A young girl in the office made out the statements. I did not see whether or not she made any copies of the statements. The typewriting was done in a different room. William Morris gave her the directions.

(It was then stipulated that photostats of certain Cashier's Checks might be used in lieu of the originals.)

Mr. Tolin thereupon produced the following documents: a photostatic copy of a \$1000 Cashier's Check, No. 202225, which was marked by the clerk Government's Exhibit 4 for identification. A photostat of a Cashier's Check for \$2000, No. 202220, which was marked by the clerk Government's Exhibit No. 5 for identification. A photostat of a Cashier's Check in the amount of \$2000, No. 202229, which was marked by the clerk Government's Exhibit No. 6 for identification. A photostat of a check in the amount of \$1000, No. 202224, which was marked by the clerk Government's Exhibit No. 7 for identification. The original of a check signed by Anthony Arrigo in the amount of \$238, dated October 27, 1943, payable to Morris Brothers Fruit Company, which was marked by the clerk Government's Exhibit No. 8 for identification. Govern-



(Testimony of Anthony Arrigo)

ment's Exhibits Nos. 4, 5, 6, 7 (being photostats of the originals), 8 and 9 were all paid by me to William Morris for two cars of oranges bought at the time and represented by Government's Exhibits No. 2 and 3 for identification.

I took delivery of the one car of oranges immediately and paid the transportation. I took delivery of the other car at a later date and also paid the transportation on that. I did [14] not pay Morris Brothers or William Morris any money outside of the checks and did not receive any change when I gave him the checks.

Mr. Tolin: I offer in evidence Exhibits No. 2 and 3 for identification.

Mr. Leake: To which we object on the ground that Exhibits 2 and 3 are incompetent, irrelevant and immaterial.

Th Court: Let me see this. Are those the so-called invoices or statements?

Mr. Leake: Statements.

Mr. Tolin: He testified he received them from the defendant.

The Court: Objection overruled. They may be received in evidence, marked with the numbers that they already have.

Mr. Leake: May I have an exception to the ruling on Exhibits 2 and 3?

The Court: All right.

(Testimony of Anthony Arrigo)

Mr. Tolin: I offer in evidence Exhibit No. 4 for identification; 5, 6, 7, 8 and 9, all for identification.

The Court: They may be received.

The Witness resuming: I received Exhibits 2 and 3, those invoices from Mr. William Morris. I don't remember as to whether the stamp "paid by" was put on after I turned the checks over to him. I do not remember who put the signature on this. I had them in my possession after the transaction was over and they were run.

#### Cross-Examination

By Mr. Leake:

I got Exhibits 2 and 3 on the 27th day of October. They were prepared in another room. I did not see them prepared. I never saw any copies of the statements other than those which I received. These Exhibits 2 and 3 are my copies and I delivered them to Mr. Tolin.

Exhibit No. 8 which is a check bearing date of October 27, 1943, in the amount of \$238 was written by the young lady [15] who came from the other office. I handed her my checkbook to draw the amount which was necessary in concluding the transaction. She made it out and then I signed it.

The other check bearing date of October 27, 1943, in the amount of \$164 made payable to cash is in my handwriting. The girl did not make that out. Somehow or another I got in the notion to make the check myself, and made it. I made it at the same time that the other check was made. I let the girl make out one and I made out the other. The check for \$164 made payable to cash was not given to Andrew Morris and I never got any money from

anybody. I do not know whether I met Andrew Morris at that time. I know I met one of the Morrises in there. I do have a slight memory of being told that it was Andrew. I think he hung around a little while and he said, "My name is Andrew." I did not ask him to cash the check for me, Exhibit 4 in the amount of \$1000 likewise endorsed by Andrew Morris. It has my endorsement above his endorsement. I did not give this check to Andrew Morris and get the cash on it. I knew at the time of this transaction that ceiling price was \$4.50.

I knew when I bought the oranges that I was paying more than the ceiling price.

The oranges which were shipped to me came from the La Verne Cooperative Storage; both carloads. We had some controversy regarding the oranges and wrote several letters. Among them was a letter addressed to the La Verne Cooperative Citrus Association and because of my complaint I received a refund in the sum of \$436.50 from Morris Brothers. I recognize this check of Morris Brothers in the sum of \$436.50 as the amount received as an adjustment upon our complaint about the quality of the oranges in one car. (The check was thereupon offered and received in evidence as Defendant's Exhibit A.)

The Witness resuming: I recognize this letter on the letterhead of Aldrich & Company. My name is signed to the letter, [16] but I did not sign it. I dictated the letter, however. That portion of the letter reading, "Also you mention something about black market operations, on the remark that we said 'we paid a tremendous price on oranges.' Our remark in that letter means only that we paid the ceiling price and no more, but it is a tremendous price for such a poor quality of oranges."

(Testimony of Anthony Arrigo)

(The letter was thereupon offered in evidence and received as Defendant's Exhibit B.)

Witness resuming: I gave the checks to Mr. William Morris in his private office. The check which the girl made out was made out on the same table in the private office. I signed my name to the check and handed it to Mr. Morris. I don't know why I gave two personal checks. If I had thought of it at the time, I would have given one check. I don't have any specific recollection why the two checks were made, but they were made for the reason that the full amount was then paid. I don't know which of the personal checks, Exhibits 8 and 9 was made out first. I think I handed them to Mr. Morris at separate times.

### Redirect Examination

By Mr. Tolin:

The oranges I received were wrapped and packed in boxes. The difficulty I had of spoilage referred to the last car shipped only. That is the car upon which we received the adjustment. As to the first car the quality was just perfect, and I didn't demand any adjustment on the first car because there was no reason for it.

Mr. Tolin: The Government rests.

(The following proceedings were had out of the presence of the jury):

Mr. Leake: If the court please, I move the court at this time for a directed verdict on the ground—

The Court: If you have a good point, make it just to dismiss rather than for a directed verdict.

Mr. Leake: I am rather unfamiliar with the procedure here. [17]

The Court: All right, even if you make it as a directed verdict, I can take it on the other ground, but we prefer to handle the case, especially if your point is good as to one count and not so good as to the other. It confuses the jury to direct the jury as to the one, and have them go on as to the other.

We just say to dismiss and they proceed on the remainder. It makes it simpler.

Mr. Leake: Taking up Count 1 of the complaint, the charging allegation says that William Morris did knowingly, willfully, and unlawfully make an entry false in a material respect, in Morris Brothers *Food Company's* copy of a statement showing the sale to Aldrich & Company and so forth.

Now, we have no evidence of any kind or character before the court as to what the copy of Morris Brothers' copy shows. The only evidence which we have is the copy produced by Aldrich & Company by Mr. Arrigo, a partner of the Aldrich & Company, which he stated was his copy and he never saw any other copy. Therefore, as to the contention of the Morris Brothers Company, there is no evidence of any kind or character.

The Court: Except such inference as may be drawn from the fact that what he was given was a carbon copy, and the original must have conformed to that.

Mr. Leake: I don't believe an inference is sufficient to overcome the presumption of innocence.

The Court: Well, that is an argument.

Mr. Leake: In other words, there is no evidence whatever unless it could be, as the court pointed out, a mere

inference, but he didn't see the other copy. There is no evidence that there was a copy in this particular instance, or if there was a copy, what it contained in this particular instance.

The same objections apply to Count 2. There is no evidence. It is not charged that a false invoice was delivered to Aldrich & Company, but it says Morris Brothers Company. There is [18] no proof that Morris Brothers have a copy of it or that the copy corresponded to the other one which the Aldrich Company—

The Court: It goes a little further than that, and that is that there is no showing that a statement of that kind is a document required to be kept.

Mr. Leake: That is right. There is no showing of that at all.

The Court: That raises the point as to whether there is any showing. After all, invoices are matters of convenience and custom. Some people who send out an invoice follow it by a statement. The invoice is merely information and that statement is to make payment on.

Sometimes you get in a hurry and don't know what the thing is, particularly if you don't know whether to pay it. Sometimes I send out a check. Here recently I waited for a statement from the Water & Power Department, and they called up and said that that was all the statement they send out.

Therefore, when it comes to invoices and statements, the question I raise is whether some showing ought not to be made that an invoice or statement is a document required to be kept.

Mr. Leake: That is true.



The Court: There is no showing of the false entry. They haven't produced the books, the books that are required to be kept. Under the law of California, it is a misdemeanor not to keep books and it is a felony to keep them badly, but there is no law I know of requiring a man to keep invoices. He can carry them on the cuff.

Mr. Leake: This is not even an invoice. This is a blank statement.

The Court: That is what I have in mind. Go ahead. I will hear Mr. Tolin.

Mr. Leake: Now, further, if the court please, as applying [19] now to all the counts, we have no proof whatever of a ceiling price. Just briefly as to what evidence we have at the present time, we have some invoices here from the California Fruit Growers Exchange showing certain purchases were made.

There is certainly no inference from that that they didn't buy any place else. In fact, the evidence that the government produced was that they bought from a large number of different concerns. The testimony of the government's witnesses also shows, particularly the testimony of Mr. Louis Morris, that no part of the purchases covered by these invoices went into the La Verne Packing House, no part of it.

The testimony of Mr. Arrigo was that the oranges which he bought came from the La Verne Packing House, which is the only evidence we have at all that shows that the oranges he got were not the oranges covered by these invoices.

The Court: The rule provides that when you have no other way of figuring the price, you figure by the highest



price he bought the preceding week, regardless of where the shipment originated.

Mr. Leake: I am coming to that. First, I want to point out what the evidence was. We have no evidence before the court first as to the biggest purchase. The only evidence we have are some purchases which don't purport to be all the purchases and were not the oranges which they got.

Now, the law provides for the method of figuring this. Referring to Section 1351.1405, Subdivision (c), which is the subdivision under which the charge is brought—well, before I go into that, I want to point out that they are alleged to be intermediate sellers of a certain class. There is no evidence whatever before the court as to the class of seller they are, but taking the price fixing schedule under which they are proceeding, it says:

“The base price of any intermediate seller who [20] purchased from a packer or broker shall be the base price furnished to him by his supplier.”

In other words, he starts with the base price which is given to him, right or wrong.

The Court: Don't get into that subject, because the O.P.A. and I don't agree on that interpretation. That is one section I have interpreted before. I wrote an opinion on it. They interpret it differently than I do. I interpret it to mean the price the man actually paid. They say the price he paid properly computed by the man from whom he buys. I have an opinion coming up. That is where they and I disagree.

Mr. Leake: Taking this for an example, suppose they sell the oranges to the Morris Brothers for instance for \$6.00 a box and they put on their invoice “Base price

\$6.00" and that is not correct. It shouldn't be that. Nevertheless, under the regulations, Morris Brothers must take that as their base price.

The Court: I agree with you on that. That is what I held in the civil case. The price furnished means "given" and given either orally or in an invoice and doesn't mean the price given by a man who himself has computed it.

We brought that out in another case. Let us not go over that. I haven't changed my mind as indicated by that opinion.

In other words, the price furnished means the price given, and if the other fellow overcharged him, why, Morris Brothers are not my brother's keeper. So go after him and not after me. You and I agree on that.

I won't ask Mr. Tolin his view because they have had their opportunity in another case. I am merely telling him I am still of the same opinion.

Mr. Leake: There is no evidence in this case as to the base price of oranges sold to Aldrich & Company, not one iota, because the evidence establishes that it wasn't the oranges bought from the fruit exchange. It was some other oranges. [21]

Furthermore, these statements show this car to contain Sublime, Splendor and Blue Base Brands. Each statement contains the same notations.

The Court: That is right.

Mr. Leake: On these invoices, which are the only purchases they show, we find none of those brands. So, we not only have that, but again I say we have the testimony that these oranges didn't go into that packing house and couldn't be the oranges, so where is the base price to start with on oranges sold to Aldrich & Company?

Then in addition to that, it goes on as follows:

“The ‘base price’ of any intermediate seller who purchases from an auction market, commission merchant, or terminal seller shall be the ‘base price’ of his supplier,” and so forth.

These were auction market oranges. There is no showing that the others are.

Continuing:

“Except that if his supplier is not within local hauling distance of his customary receiving point, the intermediate seller shall compute a new ‘base price’ by adding to that ‘base price’ the freight to his customary receiving point.”

There is no showing here again where the oranges came from, whether any freight charges were involved or not, whether delivered or not. Now, delivery from Morris Brothers to their customer has nothing to do with delivery to Morris Brothers. Suppose they bought them in Arizona and had to pay the freight here?

The Court: There is another regulation which computes it as saying the nearest packing house.

Mr. Leake: That is where it is a local concern.

The Court: That is right. [22]

Mr. Leake: To go on:

“If he resells to another intermediate seller, he shall give such purchaser notice in writing of his ‘base price’ reported to him by his supplier or his newly computed ‘base price,’ as the case may be.”

Then it goes on as follows:

“(d) The ‘base price’ of any intermediate seller who purchases from an intermediate seller shall be the same ‘base price’ reported to him by his supplier.

“(e) The intermediate seller shall calculate his maximum price for each item of citrus fruit for each calendar week as follows:

“(1) He shall first determine his proper class under Paragraph (b) of this Section.

“(2) He shall next determine the ‘largest single purchase’ made by him during the preceding calendar week of the citrus fruit for which he is calculating his maximum price.”

There is no proof here whatever regarding any purchases of the brands with which we are dealing.

Then it goes on as follows:

“The ‘largest single purchase’ means the greatest quantity of the item for which he is determining a maximum price, purchased in one lot, and which was delivered to his customary receiving point during the preceding calendar week. The ‘preceding calendar week’ is the calendar week preceding the week for which he is calculating his maximum price.

“(3) He shall next obtain his base price for his ‘largest single purchase’ during the preceding calendar week. In the event that he made two or more purchases of the quantity which would be his ‘largest single purchase,’ he shall use as his base [23] price the average of the base prices for such purchases.

“(4) He shall then compute his maximum prices as follows:

“(i) An intermediate seller in Class 1 or Class 2 who buys from a packer, broker, auction market or terminal seller, shall multiply his base price by 1.095.

“(ii) An intermediate seller in Class 1 or 2, who buys from another intermediate seller or from a commission merchant shall multiply his base price by 1.20.

“(iii) An intermediate seller in Class 3 who buys from a packer, broker, auction market or terminal seller shall multiply his base price by 1.21.

“(iv) An intermediate seller in Class 3 who buys from another intermediate seller or from a commission merchant, shall multiply his base price by 1.32.

“(5) The resulting figure in each case shall be the maximum price of the intermediate seller for the calendar week for the item of citrus fruit being priced.”

Then we go on with a different formula and they haven't brought us under either formula:

“(6) In the event that the intermediate seller received no deliveries of the item being priced, during the preceding calendar week, but made sales of the item during the preceding calendar week, his maximum price remains unchanged from his maximum price of the preceding calendar week. In the event that he received no deliveries and made no sales of the item during the preceding calendar week, he shall calculate his maximum price for the item in the same

manner as set forth in this section [24] except that he shall use the base price of the first lot of the item delivered to him during the calendar week for which he is computing a maximum price and the maximum price so calculated shall continue to be his maximum price for the remainder of the calendar week."

Now, we submit that every item upon which the court or a jury might determine a maximum price is missing in this case. There isn't any place to start and there isn't any figures upon which we can rely in the multiplication or in reaching a maximum price.

I submit that that applies to all counts and any prices. The objection applies to the first two counts.

Mr. Leake: I have one more thought with reference to the first two counts. There is no evidence here. The testimony was that the girl in the next office made up these statements. There is no evidence that William Morris made any false entry in the records of Morris Brothers Fruit Company.

The Court: Well, of course the testimony must be taken in conjunction with the testimony of Mr. Arrigo as to what the agreement was, as to the direction which Mr. Morris gave of the computing of the bill and the manner of payment, and that is a question of fact for the jury to determine in the light of any additional testimony given on the part of the defendant.

I will grant the motion as to Counts 3 and 4 on the ground that the government has not met the burden of

proof on the basic price. It is up to the government to show the foundation for the basic price, and the government's testimony was merely to the effect that certain purchases were made from some concern and the evidence has shown that they have bought from others, or may have bought from others.

There is no showing as to what the basic price was for the preceding week, and for that reason Counts 3 and 4 are not proved and will be dismissed. [25]

The motion as to Counts 1 and 2 will be denied.

Mr. Leake: May we have an exception?

The Court: Yes. All right, bring in the jury.

(Thereupon, the proceedings were resumed within the presence and hearing of the jury as follows:)

The Court: Let the record show that the jury has returned and that the defendant is present with counsel.

Ladies and gentlemen, as a result of certain motions that have been made, the court has dismissed Counts 3 and 4. Those are the counts, if you remember, which charged the selling at excess prices.

There remain before you for consideration Counts 1 and 2 which relate to the same transaction but merely charge that the price at which the sale was made was falsely entered upon books or documents required to be kept by the defendant, so that only two counts remain in the case.

You may proceed.



## WILLIAM MORRIS,

the defendant herein, called in his own behalf, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Leake:

I am one of the partners of the Morris Brothers Fruit Company. That company has been doing business in Los Angeles since 1928. Their place of business is at 766 Market Quarter. We have five doors and upstairs we have four or five offices where the girls work. They work there and we work downstairs. On the main floor we have oranges, lemons and grapefruit. There is a private office upstairs at the front of the mezzanine. It looks out over the floor below. There are large windows all along the side looking out over the floor below. These windows are kept open. From the main floor of the store anyone can see into the private office.

Morris Brothers do a gross business of around a [26] million dollars a year.

I first met Mr. Arrigo in October, 1943, and had a transaction with him on October 27, 1943.

He came in one day and asked me for oranges. That was couple days before the sale.

I told him that at that time we didn't have any oranges; that the oranges were at La Verne in cold storage, and if he wanted to see them he could go and look at them and then come back and we would make a deal. That was all of the conversation at that time. I did not tell him that I would require \$1.25 above the ceiling.

He returned in a couple of days. He said he had seen the oranges and wanted two cars. I sold them to him at \$4.50 per box.

(Testimony of William Morris)

I never saw the check dated October 27, 1943, in the amount of \$164 endorsed by Andrew Morris before this time. That check was not given to me as part payment for the oranges. I did not get any of the checks. The girl got the checks. She made out the bill and got the checks and deposited it. None of the checks were handed to me. I saw the checks. I counted them and passed them to the girl. I did not see Government's Exhibit No. 9 at that time. That was never given to me at any time as part payment for the oranges. The signature on the back is the signature of Andrew Morris, my brother. I never saw the original check of which is Government's Exhibit No. 4 before. The endorsement on the back is the endorsement of my brother.

I never at any time got any money from Mr. Arrigo in addition to \$4.50 per box. The girl figured the price. I did not tell the girl anything about what to put on the statements. The girl deposited those checks in the bank.

(A duplicate deposit slip of Morris Brothers was thereupon offered and received in evidence as Defendant's Exhibit C). [27]

#### Cross-Examination

By Mr. Tolin:

Mr. Andrew Morris is my brother. He is in business with me.

So far as I know \$4.50 per box set forth on the invoice is the correct ceiling price.

Louis Morris was the manager in charge. He was away in New York during this week of October 27. I was in charge in his absence. I had complete charge of the place.

(Testimony of William Morris)

I had charge over the bookkeepers and clerks and gave them directions which they carried out. In some instances I checked up on them to see that they were following my directions. During the absence of Louis Morris, my brother Andrew was helping me run the place.

#### ANDREW MORRIS.

was called as a witness by and on behalf of the defendant, having been duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Leake:

I am one of the partners of the Morris Brothers Fruit Company. I have been such partner for 15 years more or less. I was introduced to Mr. Arrigo by my brother when he came into the store to buy oranges. I saw Mr. Arrigo four or five hours after I first met him. He came into the store and asked for Bill. My brother was out of the store, and he asked me if I could help him. I said "Yes." He said, "I got to have some money and cash a check." I told him that we can cash the check.

I recognize Government's Exhibits No. 4 and 9. Exhibit 4 is a photostat of a check. That is my signature on the back of those checks. I cashed those checks for Mr. Arrigo. I gave him the cash in the amounts of those checks.

#### Cross-Examination

By Mr. Tolin:

I gave him the exact amount of the checks in cash. He didn't buy anything at that time. The money I used was

(Testimony of Andrew Morris)

my personal money. I didn't take it out of the till. Most of the business [28] of Morris Brothers is transacted as a cash business. We sell oranges in carload lots and truck-load lots. People pay in cash and the cash goes into the register. I have access to the register. I cannot remember whether I cashed both of the checks at the same time. My brother was not there. He was not there when I cashed these. He was not in the store at the time Mr. Arrigo came. When I cashed the checks my brother was out. At the time my brother introduced me I had asked whether Arrigo's credit was good to cash checks, but at the time the checks were cashed my brother was not there and I took that money out of my own pocket and gave it to him. I don't remember whether I cashed both of these checks for Mr. Arrigo at the same time or different times. I don't know whether it was one or two days after. I saw Mr. Arrigo only a couple of times. At the time he came in and made the purchase my brother introduced me, then he came back later and asked for my brother and my brother being out I cashed these checks for him. Those are the only times I saw him. I see him here in court (indicating the witness Anthony Arrigo). At the time I cashed the checks I knew Mr. Arrigo had bought two carloads. I don't know exactly how many boxes were in those carloads, but I know there are no less than 462 boxes in a carload. Most of them are 462 in a straight car. I know 462 and up. I didn't know that the checks

(Testimony of Andrew Morris)

that he was cashing were exactly a dollar per box because most of them are 462 boxes in a straight car.

We close our business day at two o'clock in the afternoon. Under market regulations we cannot sell after two o'clock. We start at six o'clock in the morning. I saw Mr. Arrigo only a couple of times.

Mr. Arrigo came in the first time around nine o'clock in the morning. He came back to cash the checks around two o'clock in the afternoon. I didn't take him to the bank. Our bank is [29] located at 8th and Central. I have a personal account at Indiana and Whittier. I am known at the bank at 8th and Central. I could cash a check or identify a person at the bank, but I had the money in my pocket.

### Redirect Examination

By Mr. Leake:

I do a great deal of buying for the firm. That buying is usually done in cash. That is why I always carry a large amount of money with me. When I use my own money for that purpose, I reimburse myself from company funds. At the time I cashed these checks, I knew Mr. Arrigo had bought two carloads of oranges. I did not know exactly how many boxes were in the car. Most cars consist of 462 boxes.

The defense rests.

ANTHONY ARRIGO,

a witness called by and on behalf of the government, having been previously duly sworn, resumed the stand and testified as follows:

## Direct Examination

By Mr. Tolin:

I am not sure whether I know Mr. Andrew Morris. I guess I must have talked to him and probably six or eight others one morning there. I never asked him to cash any checks for me, and he never cashed any checks for me. Government's Exhibit 8, a check for \$238.00 was not written by me. The \$164.00 check was completely written by me. As to whether anything was said by Mr. William Morris to me about the time I wrote that check as to a reason for writing it a separate check, my answer is it was to complete the two times 582. My cashier's check was made for \$2000 and I couldn't break any of them to complete the deal so I drew a separate check to complete the amount.

The Court: I think that creates confusion. Let me see if I can clear this up. When you came here to buy fruit, you brought with you cashier's checks made out to you?

The Witness: That is right, sir. [30]

The Court: And they were in round sums?

The Witness: Even sums.

The Court: Even sums. That is a good word. So, when you bought these two carloads, you pulled out of your pocket a check for \$1000.00?

The Witness: Yes.

The Court: And then endorsed it on the back?

(Testimony of Anthony Arrigo)

The Witness: That is right.

The Court: And then you pulled out another one for \$2000 and endorsed it on the back?

The Witness: Yes.

The Court: This was a cashier's check that would be honored where a personal check might not be?

The Witness: Yes.

The Court: And then you pulled out another. That made \$4000.00?

The Witness: Yes.

The Court: And then you signed the check for \$238.00?

The Witness: That is right, sir.

The Court: To make up the purchase?

The Witness: To complete the purchase.

The Court: As shown by the two statements?

The Witness: Yes, sir, that is right.

The Court: All right. Then, when you came to pay, you took the \$1,000.00 and made out the \$164.00 to make up the twice 582?

The Witness: That is correct, sir.

The Court: I think the reason for the confusion was that these should have been passed to the jury. Perhaps you had better pass them to the jury now.

Mr. Tolin: Yes, sir.

Q. By Mr. Tolin: Did you buy any other fruit while you were here? [31] A. No, sir.

Q. Where did you stay while you were in town?

A. At the hotel, in the Rosslyn Hotel.

Q. Did you have other funds with you?

A. I had current cash.

Mr. Tolin: That is all. You may inquire.



(Testimony of Anthony Arrigo)

Cross-Examination

By Mr. Leake:

Q. Did you hand all these checks over at one time?

A. Yes, sir.

Q. The whole bunch?

A. No. I may correct that. The \$1000.00 check and the \$164 check was handed at different times.

Q. At a different time?

A. Yes. I would say five minutes or ten minutes afterwards.

The Court: You completed one transaction and then the other?

The Witness: Yes.

The Court: All right.

Mr. Tolin: Was that handled at the same session at the same time you were at the office?

The Witness: It was only a matter of five or ten minutes apart.

The Court: You didn't go out in the meantime?

The Witness: No.

The Court: You were still there. Just five minutes elapsed between the time you handed over the first and the second sales?

The Witness: The \$164.00 check was written by me all the way down the line, your Honor.

The Court: I know. You have told us that.

Q. By Mr. Leake: Did you come back there in the afternoon? [32]

A. No. After I completed the deal, I went away.

Q. Didn't you come back? A. No, sir.

Q. At any time? A. No sir.

The government rests and the defense rests.

On January 4, 1945, government and defendant having rested their respective cases, the defendant Morris made a motion for a directed verdict and a motion to dismiss as to the remaining counts; namely, Counts 1 and 2 upon the ground that the evidence introduced by the government was insufficient to sustain the charges contained in said Counts 1 and 2 or either of them, which said motion was by the trial court denied and defendant duly excepted thereto. Following argument by counsel, the court thereupon charged the jury as follows:

The Court: Ladies and gentlemen, you are about to hear instructions from the court on the law which is to cover your determinations in this case. All the instructions are written except the informal instructions given at the end as to your conduct in the jury room.

If, after you begin your deliberations, some questions arise about the instructions, they will be sent to you on request. You are also entitled to have all the exhibits that have been introduced in evidence while you are deliberating on this case.

The law of the United States permits a judge to comment on the facts in the case. Such comments are mere matters of opinion which the jury may disregard if they conflict with their own conclusions upon the facts. This for the reason that the jurors are the sole and exclusive judges of the facts in each case. However, it is not my custom to exercise this right nor shall I exercise it in the present case. I shall leave the determination of the facts in the case to you, satisfied as I am that you are fully capable of determining them without my aid. However, it is the [33] exclusive province of the judge of this court to instruct you as to the law that is applicable to the case. in

order that you may render a general verdict upon the facts in the case, as determined by you, and the law as given you by the judge in these instructions. It would be a violation of your duty for you to attempt to determine the law or to base a verdict upon any other view of the law than that given you by the court—a wrong for which the parties would have no remedy, because it is conclusively presumed by the court and all higher tribunals that you have acted in accordance with these instructions as you have been sworn to do.

During the course of the trial, I have, at various times, asked questions of certain witnesses, including the defendant. My object in so doing was to bring out in greater detail certain of the facts not yet fully testified to by the particular witness. If, from these questions, you have formed the inference that I have an opinion as to the particular facts to which the questions related, it is your right to treat it as an opinion which you are at liberty to disregard in arriving at your own conclusions, as to the particular facts or as to other facts in the case.

You are here for the purpose of trying the issues of fact that are presented by the allegations in the information and the plea of the defendant thereto. This duty you should perform uninfluenced by pity for the defendant or by passion or prejudice on account of the nature of the charge against him. You are to be governed, therefore, solely by the evidence introduced in this trial, and the law as given you by the court. The law will not permit jurors to be governed by mere sentiment, conjecture, sympathy, passion or prejudice, public opinion, or public feeling. Both the public and the defendant have a right to demand, and they do so demand and expect, that you will carefully and

dispassionately weigh and consider the evidence and the law of the case and give to each your conscientious judgment; and that you will reach a [34] verdict that will be just to both sides, regardless of what the consequences may be. The offense with which the defendant is charged is: Violation of the Price Control Act of 1942.

In this connection, you are instructed that the information on file herein is a mere charge or accusation against the defendant and is not any evidence of the defendant's guilt, and no juror in this case should permit himself to be, to any extent, influenced against the defendant because or on account of such information on file.

It is the duty of the jury to decide whether the defendant be guilty or not guilty of the offense charged considering all the evidence submitted to you in the case.

The jury are the sole and exclusive judges of the effect and value of the evidence addressed to them and of the credibility of the witnesses who have testified in the case, and the character of the witnesses as shown by the evidence, should be taken into consideration, for the purpose of determining their credibility and the fact as to whether they have spoken the truth. And the jury may scrutinize not only the manner of witnesses while on the stand, their relation to the case, if any, but also their degree of intelligence. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testified, his interest in the case, if any, or his bias or prejudice, if any, against one or any of the parties, by the character of his testimony, or by evidence affecting his character for truth and honesty or integrity or by contradictory evidence; and the jury are the exclusive judges of his credibility.

A witness may also be impeached by evidence that he made, at other times, statements inconsistent with his present testimony as to any matter material to the cause on trial.

A witness false in one part of his or her testimony is to be distrusted in others; that is to say, the jury may reject the [35] whole of the testimony of a witness who has wilfully sworn falsely as to a material point; and the jury, being convinced that a witness has stated what was untrue, not as a result of a mistake or inadvertence, but wilfully and with the design to deceive, must treat all of his or her testimony with distrust and suspicion and reject all unless they shall be convinced that notwithstanding the base character of the witness, that he or she has in other particulars sworn to the truth.

The law does not require any defendant to prove his innocence, which, in many cases, might be impossible. On the contrary, the law required the government to establish his guilt and that by legal evidence and beyond a reasonable doubt.

If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you should do so, and in that case, find the defendant not guilty. Reasonable doubt is not a mere possible doubt. Because everything relating to human affairs, and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

While the defendant in a criminal action is not required to take the stand and testify, yet if he does so, his credibility and the value and effect of his evidence are to be weighed and determined by the same rules as the credibility and effect and value of the evidence of any other witness is determined. And the tests for determining credibility of witnesses as given you in another part of the instructions are to be applied to his testimony alike with that of other witnesses.

While originally the information contained four counts, the defendant is on trial on two counts only, counts one and two. [36]

You will give to each count individual consideration. The language of counts one and two is identical, and hence, the elements which the government must prove as to these two counts are the same. However, it is contended by the government that the transaction charged in Count Two is a different one from that charged in Count One, and in order to sustain a guilty verdict as to both Counts One and Two, you must so find. Otherwise only one of said counts can be sustained, if proved.

If you believe beyond a reasonable doubt that on or about October 27, 1943, defendant sold five hundred and eighty two boxes of oranges to Aldrich & Company at a price of \$5.50 per box, or for a total sum of \$3,619.00, and that said transaction was on behalf of Morris Brothers Fruit Company, and that defendant wilfully and deliberately, and not as a result of innocent mistake entered upon said Morris Brothers Fruit Company's copy of a statement showing such sale, an entry that the sale had been made at a price of \$4.50 per box or a total sale price of \$2,619.00, and that the statement was made in a record of



the kind customarily kept by Morris Brothers Fruit Company during the time prior to January 11, 1943 (effective date of Regulation) then you will find defendant guilty as charged in Count One of the Information, regardless of what you may believe the correct ceiling price of such oranges to have been at said time.

On the other hand, if you entertain a reasonable doubt as to whether any one or more of the elements I have just recited to you have been proved, you must give the defendant the benefit thereof and acquit him.

As to Count Two, the elements are identical and you will convict defendant of that Count, provided, that in addition to the elements I have read you also believe that the transaction pleaded in Count Two has been proven to be a distinct one from that charged in Count One, otherwise you will acquit as to Count Two.

The court instructs you that the regulation under which this [37] case arose, Maximum Price Regulation 292, was promulgated by the Price Administrator on December 31, 1942, to become effective January 11, 1943, and was duly approved by the Secretary of Agriculture before its promulgation, and that all this was done pursuant to the authority granted by the Congress of the United States in the Emergency Price Control Act of 1942, as amended.

The regulation was duly published in Volume 8 of Federal Register, pages 135-138, under date of January 5, 1943.

In every criminal offense there must be concurrence of act and intent. This is especially true in an offense like the present one which requires that the act shall be done knowingly and wilfully.



This intent is a material element of the offense which, like all others, must be proved beyond a reasonable doubt.

In determining the question, you are to consider all the facts and circumstances in the case which touch the conduct of the defendant, as well as his declarations or admissions, if any.

Criminal intent may be implied from the acts, conduct, declarations or admissions of the defendant. Such acts, conduct, declarations or admissions as shown by the evidence, considered in relation to the charge made, may establish criminal intent beyond a reasonable doubt.

You will note that under the information the acts are alleged to have been done knowingly, and wilfully.

Doing or omitting to do a thing knowingly and wilfully implies not only a knowledge of the thing, but a determination with a bad intent to do it or to omit doing it.

The word "wilfully" denotes an act which is intentional or knowing, or voluntary, as distinguished from accidental. When used in a criminal statute, it generally means an act done with a bad purpose. The word is also employed to characterize a thing done without ground for believing it is lawful, or conduct marked [38] by careless disregard whether or not one has the right so to act.

You are instructed that whoever aids, abets, counsels, commands, induces or procures the commission of an act constituting an offense in any law of the United States is guilty of the offense so committed. So it is not necessary for you to believe that the defendant personally made the entries in the statements which the government charges he made. Therefore, if you believe beyond a reasonable doubt that the defendant aided, abetted, counseled, commanded,

induced or procured the making of the statements or either of them by others in his employ, then you may hold him responsible for them as if he had actually done the physical preparation himself.

The first duty upon retiring to the jury room will be to select one of you to act as foreman.

In the Federal Courts, both civil and criminal cases, all 12 jurors must agree before a verdict is returned. That differs from the State Courts where in civil cases 9 out of 12 may return a verdict.

For your assistance, the Clerk of the court has prepared a verdict which reads:

“Verdict: We, the jury in the above-entitled cause, find the defendant William Morris ....., as charged in the first count of the amended information, and ....., as charged in the second count of the amended information.

“Los Angeles, California

“January ....., 1945.

“....., Foreman of the Jury.”

You must render a verdict upon each of the counts. The verdict, of course, need not necessarily be the same because I have already explained the circumstances which are necessary and a situation may arise where you might find the facts as to one count differing from the facts as to the other, which would warrant [38] different verdicts in the two counts.

Should you find the defendant not guilty on Count One, you will insert the words “not guilty” after his name as to the first count. Should you find him guilty as to the first

count, you will insert that word on the second line after the first count. Should you find him not guilty on Count Two, you will insert different words. Whichever your verdict is, it must be fully filled out and signed by your foreman and dated in the place indicated and returned to the courtroom.

The Court: Are there any exceptions to the instructions given by the court?

Mr. Tolin: None, your Honor.

Mr. Leake: None, your Honor.

The Court: Will counsel and the reporter approach the bench?

(Thereupon, the following proceedings were had outside of the hearing of the jury.)

The Court: Just because you haven't been in the Federal Courts, I wondered if you intended to offer any objections to the instructions offered, because those exceptions you must make at this time.

Mr. Leake: Yes, your Honor.

The Court: Well, you will have to make them in open court as to each of the instructions.

Mr. Leake: Thank you very much.

(Thereupon, the following proceedings were had within the hearing of the jury.)

The Court: I think counsel possibly misunderstood my statements about exceptions to the instructions given. I should have said instructions refused. We use that phrase, but we mean that it is to apply to those refused also, and for that reason I will ask now if counsel for either side

have any exceptions to [39] any of the instructions proffered by them and not given by the court?

I will explain to the jury that counsel are required to present their views on the law to the court, and the court either adopts them, modifies them, or rejects them, and counsel are also required to indicate to the court before the jury retires any exceptions they may have to those instructions. It is the only place in the record they can show their dissatisfaction in order to state it later on in a higher court.

All right.

Mr. Leake: Shall I refer to them by number?

The Court: Yes. I know what they consist of.

Mr. Leake: I wish to except to the court's failure to give instruction No. 3 relating to an accomplice, No. 4 relating to the guilt of the one who buys, No. 5 and No. 6.

The Court: Well, I will say this. In accomplice cases they give an instruction, not in the form you give it, because the federal law does not require corroboration. All you do is merely state that an accomplice's testimony should be viewed with suspicion. However, with the elimination of the two counts, there is no accomplice question before the court because the regulation charges him with keeping books, and an accomplice must be guilty of the same offense, and the regulation does not require the buyer to keep any books.

Therefore, with Counts Three and Four, the question became moot and I can't very well give an instruction on accomplices because on Counts One and Two, Mr. Arrigo was not an accomplice.

The instruction will remain as given by the court.

(The exceptions indicated were allowed by the court.)

The Court: Swear the bailiff.

(Thereupon the bailiff was duly sworn.)

The Court: You will now retire and begin your deliberations [40] in the case, and as I have already informed you, after you have organized by electing a foreman, if you want the instructions and exhibits, they will be brought out to you if you make that known to the bailiff at the door.

(Thereupon the jury retired to deliberate.)

### Defendant's Requested Instruction No. 3

An accomplice is one who aids, abets or participates in the commission of a crime and is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

### Defendant's Proposed Instruction No. 4

One who buys at a price above the maximum price fixed by the rules and regulations of the Office of Price Administrator is equally guilty with one who sells above such prices and is an accomplice in the commission of the crime which may result from such transaction.

### Defendant's Proposed Instruction No. 5

You are instructed that the Witness Anthony Arrigo is by his own testimony an accomplice of William Morris, the defendant in this action.

### Defendant's Proposed Instruction No. 6

The testimony of an accomplice, coming from a polluted source, should be received with caution and distrust and

you should not place too much reliance thereon unless the same is corroborated by other reliable and creditable testimony.

On January 4, 1945, the jury returned a verdict of "Guilty" as to the charges contained in Count 1, and returned a verdict of "Guilty" as to the charges contained in Count 2.

The court fixed January 8, 1945, as the time for pronouncement of judgment and sentence.

On January 8, 1945, defendant filed his motion for new trial, and the defendant thereupon moved the court upon each and [41] every of the grounds therein stated that the verdict of the jury be vacated and set aside, and that a new trial be granted. Said motion for new trial was in words and figures as follows, to wit:

(Title of Court and Cause)

"Notice Is Hereby Given that defendant above-named moves the above-entitled court that a new trial be granted in the above-entitled matter upon the following grounds:

- "1. Insufficiency of the evidence to justify the verdict.
- "2. Error in law occurring at the trial and excepted to by defendant.

"Defendant specifies the following particulars wherein the evidence was insufficient to justify the verdict.

“a. The evidence was insufficient to establish that the copy of the statement, Government’s Exhibits 2 and 3, introduced into evidence was a record customarily kept relating to prices charged for citrus fruits.

“b. The evidence was insufficient to establish the kind and character of records customarily kept relating to the prices charged for citrus fruits.

“c. The evidence was insufficient to establish the fact that Morris Bros. Fruit Co. kept a copy of the said statement above mentioned.

“d. The evidence was insufficient to establish that any false entry was made in any record kept by Morris Bros. Fruit Co. relating to the prices which it charged for citrus fruit.

“The court erred in the following rulings during the trial:

“A. The court erred in failing to direct the jury to find the defendant “Not Guilty” or to dismiss Counts One and Two of the Second Amended Information at the close of the Government’s case.

“B. The court erred in failing to instruct the jury to find the defendant “Not Guilty” or to order dismissal of Counts One and Two of the Second Amended Information at the close of the evidence. [42]

“Said motion will be made upon the Second Amended Information, the defendant’s plea thereto, all papers and records on file herein, and the minutes of the court.”



The court thereupon denied defendant's motion for new trial and defendant duly excepted thereto.

The court thereupon pronounced judgment and sentence as follows:

The Court: It is the judgment of the court that the defendant for the offense of which he has been convicted in Count One of the information, shall be sentenced to an institution of the jail type for a period of six months.

It is the judgment of the court that for the offense of which he has been convicted in Count Two of the information, he shall be fined the sum of \$2500.00.

On January 9, 1945, defendant filed his notice of appeal from said judgment.

On January 10, 1945, the court made an order staying execution and allowing defendant to remain at liberty on his own recognizance pending appeal upon condition that defendant deposit the sum of \$2500.00 in registry pending appeal as provided by law in such cases, which said sum defendant thereupon deposited.

On the 7th day of February, 1945, the court, upon application of defendant, made an order extending the time for lodging the proposed Bill of Exceptions and Assignments of Error to and including the 15th day of March, 1945.

Thereafter, the following Stipulation was entered into:

“In the United States Circuit Court of Appeals  
for the Ninth Circuit

“WILLIAM MORRIS,	)	“No. 10967
	)	
Appellant,	)	
	)	
-vs-	)	
	)	“STIPULATION
UNITED STATES OF	)	
AMERICA,	)	
	)	
Appellee.	)	[43]

“Whereas, the Government’s and defendant’s exhibits in evidence in the above-entitled action which are on file in the office of the clerk of the United States District Court of California, Southern District, Central Division, are in many instances very difficult to reproduce either by typewriting or by printing and would tend to make the transcript of the record on appeal voluminous and bulky; and

“Whereas, the exhibits contain matters which both parties desire the court to see in their original form; and

“Whereas, some of said exhibits contain notations in the handwriting of various persons which both parties believe should be certified directly to the United States Circuit Court of Appeals for the Ninth Circuit from the District Court for the purposes of this appeal; and

“Whereas, both the appellant and appellee desire to avoid the expense of copying all of said exhibits bodily in the bill of exceptions;

“Now, Therefore, it is hereby stipulated and agreed by and between the appellant, William Morris, and the appellee, United States of America by and through their respective attorneys, subject nevertheless, to the approval of the United States Circuit Court of Appeals for the Ninth Circuit as follows:

“1. That each and all of the hereinafter mentioned and designated exhibits in evidence which are herein referred to respectively by the numbers and letters given them by the Clerk of said United States District Court at the time of the trial herein may be deemed by reference to be incorporated in the bill of exceptions, both generally and specifically where and whenever references are made to them by such numbers and letters in the body and context of said bill of exceptions to the same extent and purport as though each and all of said exhibits were fully set forth word for word and figure for figure in said bill of exceptions. [44]

“2. That the said District Court may in settling the said bill of exceptions include therein a copy of this stipulation in lieu of including therein either in substance or in full copies of each and all of the hereinafter designated exhibits in evidence, and that thereupon each of said exhibits shall be deemed to be included in said bill of exceptions to the same effect and purport as though each and all of said exhibits were fully set forth therein as aforesaid.

"3. That the exhibits to be included are as follows:

"Government's Exhibits:

"No. 1 for identification

" 2 " "

" 3 " "

" 4 " "

" 5 " "

" 6 " "

" 7 " "

" 8 " "

" 9 " "

"Defendant's Exhibits:

A

B

C

"4. That the United States District Court, in and for the Southern District of California, Central Division may make an order that all of the foregoing designated exhibits be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and for the safekeeping, transportation and return thereof at the cost of the appellant to be paid to the District Court upon demand.

"5. This stipulation in nowise constitutes a waiver of any objections and exceptions to the introduction of any exhibits by the District Court. [45]

"Dated: This 14th day of March, 1945.

"CHARLES H. CARR,  
United States Attorney

"By Ernest A. Tolin  
Assistant United States Attorney  
"Attorneys for Appellee

"MARIO PERELLI-MINETTI and  
E. O. LEAKE & J. J. LEAKE

By E. O. Leake

"Attorneys for Appellant

"It Is So Ordered.

"Dated: This ..... day of March, 1945.

.....  
"Judge of United States Circuit Court of Appeals.  
for Ninth Circuit."

Conclusion

Inasmuch as the matters above set forth do not fully appear in the record and in the judgment roll, the defendant William Morris tenders this, his Bill of Exceptions, and prays that the same may be signed and approved by the Honorable Leon R. Yankwich, Judge of this court.

Dated: This 13th day of March, 1945.

MARIO PERELLI-MINETTI and  
E. O. LEAKE & J. J. LEAKE

By E. O. Leake

Attorneys for Defendant [46]

The foregoing Bill of Exceptions has been examined and is approved.

Dated: This 14 day of March, 1945.

CHARLES H. CARR,  
United States Attorney

By Ernest A. Tolin

Assistant United States Attorney

Attorneys for the Government—Plaintiff

The foregoing Bill of Exceptions, together with exhibits therein mentioned and made a part hereof by stipulation, contains all of the evidence adduced at the trial of this cause and correctly shows the various proceedings during the trial as well as subsequent thereto. The same being true and correct, it is accordingly settled and allowed as a true bill of exceptions in this cause.

Dated: This 14th day of March, 1945.

LEON R. YANKWICH

Judge of the United States District Court

Received copy of the within Engrossed Bill of Exceptions this ..... day of March, 1945. Charles H. Carr, United States Attorney, by ....., Attorneys for Plaintiff.

[Endorsed]: Filed Mar. 14, 1945. [47]

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[Endorsed]: No. 10967. United States Circuit Court of Appeals for the Ninth Circuit. William Morris, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed March 26, 1945.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the  
Ninth Circuit

No. 10967

WILLIAM MORRIS,

Appellant,

-vs-

UNITED STATES OF AMERICA,

Appellee.

### STIPULATION

Whereas, the Government's and defendant's exhibits in evidence in the above-entitled action which are on file in the office of the clerk of the United States District Court of California, Southern District, Central Division, are in many instances very difficult to reproduce either by type-writing or by printing and would tend to make the transcript of the record on appeal voluminous and bulky; and

Whereas, the exhibits contain matters which both parties desire the court to see in their original form; and

Whereas, some of said exhibits contain notations in the handwriting of various persons which both parties believe should be certified directly to the United States Circuit Court of Appeals for the Ninth Circuit from the District Court for the purposes of this appeal; and

Whereas, both the appellant and appellee desire to avoid the expense of copying all of said exhibits bodily in the bill of exceptions;

Now, Therefore, it is hereby stipulated and agreed by and between the appellant, William Morris, and the appellee, United States of America by and through their respective attorneys, subject nevertheless, to the approval of the United States Circuit Court of Appeals for the Ninth Circuit as follows:



1. That each and all of the hereinafter mentioned and designated exhibits in evidence which are herein referred to respectively by the numbers and letters given them by the clerk of said United States District Court at the time of the trial herein may be deemed by reference to be incorporated in the bill of exceptions, both generally and specifically where and whenever references are made to them by such numbers and letters in the body and context of said bill of exceptions to the same extent and purport as though each and all of said exhibits were fully set forth word for word and figure for figure in said bill of exceptions.

2. That the said District Court may in settling the said bill of exceptions include therein a copy of this stipulation in lieu of including therein either in substance or in full copies of each and all of the hereinafter designated exhibits in evidence, and that thereupon each of said exhibits shall be deemed to be included in said bill of exceptions to the same effect and purport as though each and all of said exhibits were fully set forth therein as aforesaid.

3. That the exhibits to be included are as follows:

Government's Exhibits:

No. 1 for identification

” 2 ” ”

” 3 ” ”

” 4 ” ”

” 5 ” ”

” 6 ” ”

” 7 ” ”

” 8 ” ”

” 9 ” ”

Defendant's Exhibits:

A

B

C

4. That the United States District Court, in and for the Southern District of California, Central Division may make an order that all of the foregoing designated exhibits be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and for the safekeeping, transportation and return thereof at the cost of the appellant to be paid to the District Court upon demand.

5. This stipulation in nowise constitutes a waiver of any objections and exceptions to the introduction of any exhibits by the District Court.

Dated: This 14th day of March, 1945.

CHARLES H. CARR,  
United States Attorney

By Ernest A. Tolin  
Assistant United States Attorney  
Attorneys for Appellee

MARIO PERELLI-MINETTI and  
E. O. LEAKE & J. J. LEAKE

By E. O. Leake  
Attorneys for Appellant

It Is so Ordered.

Dated: This 26th day of March, 1945.

CURTIS D. WILBUR,  
Judge of United States Circuit Court of Appeals,  
for Ninth Circuit

[Endorsed]: Filed Mar. 26, 1945. Paul P. O'Brien,  
Clerk.

[Title of Circuit Court of Appeals and Cause.]

POINTS ON WHICH APPELLANT INTENDS TO  
RELY ON APPEAL AND DESIGNATION OF  
PARTS OF THE RECORD WHICH APPEL-  
LANT BELIEVES NECESSARY FOR A CON-  
SIDERATION THEREOF (Rule 19).

In conformity with the provision of subdivision 6 of Rule 19 of Rules of Practice of the United States Circuit Court of Appeals for the Ninth Circuit, Appellant William Morris sets out:

I.

Point on Which Appellant Intends to Rely on Appeal:  
The points on which appellant William Morris intends to rely on appeal are as follows:

1. Each and every assignment of error set out by appellant William Morris in the document designated "Assignments of Error" filed by said appellant.

II.

Designation of Parts of Record Which Appellant Believes Necessary for a Consideration Thereof:

1. For the consideration of the points upon which appellant intends to rely upon appeal, it is designated that the entire record as certified to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit by the Clerk of the United States District Court of Appeal

for the Southern District of California, Central Division  
be printed.

Dated: This 16th day of March, 1945.

MARIO PERELLI-MINETTI and  
E. O. LEAKE & J. J. LEAKE

By E. O. Leake

Attorneys for Appellant

Received a copy of the within Points on Which Appel-  
lant Intends to Rely on Appeal and Designation of Parts  
of the Record which Appellant Believes Necessary for a  
Consideration Thereof this ..... day of March, 1945.  
Charles H. Carr, United States Attorney, by Mary Went-  
worth.

[Endorsed]: Filed Mar. 20, 1945. Paul P. O'Brien,  
Clerk.

